

Page 1079

Page 1081

## 1 JOHN LEASE - CROSS

2 respond to emergencies at the plant due to  
 3 congestion in the parking lot, as well as some  
 4 more specific issues related to safety at the  
 5 facility such as fire hydrants and control of  
 6 secondary containment for chemicals.

7 THE ARBITRATOR: Fire hydrants had  
 8 to be in the parking lot? They couldn't be by  
 9 the building?

10 THE WITNESS: Well, I think the  
 11 parking lot arrangement constricted their  
 12 ability to put fire hydrants where they needed  
 13 to be. So they had to redesign the parking lot  
 14 to will a low them to put them closer to the  
 15 building, as I recall.

16 Q. What else was involved in that  
 17 project, Mr. Lease?

18 A. What else?

19 Q. Yes. What other work did Alcoa do?

20 A. I'm not sure of all the details.

21 There were several I just listed. There may  
 22 have been more.

23 Q. Did Alcoa have to plant trees to  
 24 provide shade for the cars, is that what Alcoa  
 25 did?

Page 1080

Page 1082

## 1 JOHN LEASE - CROSS

2 A. I believe that was actually a  
 3 requirement in the local regulation.

4 Q. Let's look at another document,  
 5 previously introduced as Claimant's 73.  
 6 Claimant's 73. Exhibit 73, do you recognize  
 7 Exhibit 73, you are an addressee on this email  
 8 from Hodge, Mr. Lease?

9 A. I see it.

10 Q. This is, do you know what  
 11 Exhibit 73 is?

12 A. Mr. Snee?

13 Q. Well, who Mr. Snee is, first let's  
 14 do that?

15 A. What is your first question?

16 Q. I was asking you what Exhibit 73  
 17 is. Then we can talk about Mr. Snee.

18 A. It is an email from Bill Snee to  
 19 myself and others in Alcoa.

20 Q. It includes his summary of Phase I  
 21 findings; is that right?

22 A. Yes. That is the subject.

23 Q. Who is Mr. Snee?

24 A. Mr. Snee is manager of compliance  
 25 in Alcoa.

## 1 JOHN LEASE - CROSS

2 Q. Alcoa's compliance manager; is that  
 3 what you're saying?

4 A. Basically, yes.

5 Q. We will look at a couple of items  
 6 on here, but let's look on page, turn to page 21  
 7 of document. Bates stamped FAIR 57178. Do you  
 8 see that, sir? Are you with me, Mr. Lease?

9 A. Yes, I do.

10 Q. This is a document prepared by  
 11 Mr. Snee and his group to analyze the results of  
 12 compliance issues; right?

13 A. I am not sure what Bill developed  
 14 this chart for, to tell you the truth.

15 Q. Go back to the cover email then and  
 16 look at the first two sentences. It says  
 17 "Attached" is a summary of the Phase I report  
 18 findings for the Fairchild sites compliance put  
 19 this together to aid in our review of the  
 20 identified compliance issues and assist those  
 21 participating in the RIP."

22 The RIP we talked about yesterday  
 23 was not rest in peace, but the rapid integration  
 24 process; right?

25 A. I see it.

## 1 JOHN LEASE - CROSS

2 Q. Back to page 21 of the document it  
 3 says there, the first item on page 21 -- your  
 4 Honor, it is Bates page 57178.

5 THE ARBITRATOR: I have it.

6 Q. The first entry under issue says  
 7 "Integrated EHS operating permit. Authorize  
 8 required one car parking lot be available for  
 9 each employee (Not a strict EHS issue)." Do you  
 10 see that, sir?

11 A. I see that.

12 Q. That is Mr. Snee's comments; right?

13 A. No.

14 Q. Whose comments are they?

15 A. I believe they extracted this from  
 16 the Phase I report.

17 Q. Next, "The site has identified this  
 18 issue as one of their main compliance issues to  
 19 address. In addition, the permit requires a  
 20 second entrance, to provide additional access to  
 21 the emergency services in the event of an  
 22 accident or emergency situation."

23 Do you see that, Mr. Lease?

24 A. Yes, I do.

25 Q. So that is the description of the

13 (Pages 1079 to 1082)

1 JOHN LEASE - CROSS  
 2 issue. It says there, going back to our  
 3 discussion just a minute ago about St. Cosme the  
 4 site was aware of this issue; right?

5 A. I don't think this description  
 6 captures the scope of the issue.

7 Q. It is not just emergency access for  
 8 vehicles and the parking one per spot?

9 A. No. When we discussed this with  
 10 the site during the site visit, the gap analysis  
 11 site visit, they provided further detail to the  
 12 team. And they also provided the estimated cost  
 13 that is in the table supplied to Mr. Hodge of  
 14 350,000 Euros.

15 Q. We will get back to that in a  
 16 second. Sticking with Mr. Snee's chart. If you  
 17 look all the way to the right the column that  
 18 says EPC Costs. Do you know EPC stands for  
 19 estimated probable cost; right?

20 A. I believe that is what it stands  
 21 for, as I recall from Phase I.

22 Q. Just above in the heading on that  
 23 chart. It is broken down.

24 A. Okay.

25 Q. Next to it says reasonable worst

1 JOHN LEASE - CROSS  
 2 Mr. Hodge, it is a much bigger number for this  
 3 project; right?

4 A. Right.

5 Q. 350,000 Euros, in fact; right?

6 A. Yes.

7 Q. Given the weakness of the dollar,  
 8 that is more than that in dollars, right, it is  
 9 like over \$400,000 or whatever it is?

10 THE ARBITRATOR: These claims in  
 11 Euros or dollars?

12 MR. ZUROFSKY: These in this chart  
 13 I believe in Euros.

14 THE ARBITRATOR: The whole case?

15 MR. ZUROFSKY: The claims are  
 16 dollars.

17 Q. So 350,000 Euros; right, Mr. Lease?

18 A. That is what I have in my chart.

19 Q. Your testimony I believe a little  
 20 while ago was well the facility knew about these  
 21 things and therefore when we are talking about  
 22 St. Cosme the facility should have known what we  
 23 are talking about in these charts, is that true  
 24 of this chart, too, the Toulouse chart?

25 A. Sorry?

1 JOHN LEASE - CROSS  
 2 case cost?

3 A. Yes.

4 Q. It is listed there as estimated EPC  
 5 cost as \$42,000; do you see that?

6 A. Yes.

7 Q. Next one over says 60,000 for  
 8 reasonable worst case cost?

9 A. I see that.

10 Q. Did you understand the site  
 11 actually had a quote for \$42,000 to do that work  
 12 at the time?

13 A. As I said, this was a number that  
 14 was developed by ERM based on their Phase I.

15 Q. Let's move a couple columns to the  
 16 left under risk management. Do you see that?

17 A. Okay.

18 Q. It says there the second entrance  
 19 needs to be established. The site has obtained  
 20 a quote of 42,000 for expanding the car park to  
 21 allow one lot per employee present as opposed to  
 22 one lot per employee at the company. Do you see  
 23 this?

24 A. Uh-huh.

25 Q. So now, in your chart you sent to

1 JOHN LEASE - CROSS

2 Q. When we were talking about St.  
 3 Cosme you told me that Mr. Miller should know  
 4 about the state of his facilities; right?

5 A. Yes.

6 Q. I want to make sure you still feel  
 7 the same about this issue, too?

8 A. Yes.

9 Q. What happens here, we have  
 10 estimate, the site had estimate for 42,000 to do  
 11 the work at the parking lot; correct?

12 A. I don't know if the site had an  
 13 estimate for 42,000. That is what ERM reported.

14 Q. ERM reported in its Phase I the

15 site had a quote for \$42,000?

16 A. I am not sure where they got their.

17 Q. You just told me from the Phase I?

18 A. I see they obtained a quote for  
 19 42,000.

20 Q. That is what the site had done  
 21 prior to the sale; right?

22 A. Back whenever this was written,  
 23 July of or early summer 2002.

24 Q. Now with this item parking lot  
 25 expansion described in the Phase I as not a

Page 1087

1 JOHN LEASE - CROSS  
 2 strict EHS issue, you send a chart that shows  
 3 estimated cost of 350,000 Euros which is ten  
 4 times that amount, roughly?

5 A. Depending on the exchange rate.

6 Q. 1.2 exchange rate it would be  
 7 \$420,000, that is ten times, right?

8 A. Correct.

9 Q. Ten times the amount; right?

10 A. Yes.

11 Q. Mr. Miller writes back to you and  
 12 asks you for more detail on the cost estimates  
 13 for that project; right? We looked at that  
 14 letter at tab 17?

15 A. Yes.

16 Q. He asked you for all the projects  
 17 but that one included. Mr. Harvey writes back  
 18 to Mr. Miller saying those estimates are being  
 19 developed. Those assessments will be sent to  
 20 you, Fairchild when they are done. Do you  
 21 recall that?

22 A. I recall what Mr. Harvey wrote,  
 23 yes.

24 Q. In light of that project why didn't  
 25 you send the information regarding the Toulouse

Page 1089

1 JOHN LEASE - CROSS  
 2 could account for the increase in cost.  
 3 Q. Was there any reason at all not to  
 4 provide Mr. Miller with that information you  
 5 just described to me, about increase in cost?

6 A. As I mentioned before, this is  
 7 information that we felt Fairchild had and was  
 8 aware of.

9 Q. Did you say that in any letter to  
 10 Mr. Miller?

11 A. No, I did not.

12 Q. Did Mr. Harvey say that in his  
 13 letter to Mr. Miller?

14 A. No, he did not.

15 Q. Did you communicate in any way to  
 16 Fairchild in response to Mr. Miller's letter,  
 17 hey, you already got that stuff and you're aware  
 18 of these issues?

19 A. Well, I'll points out it is a  
 20 two-way street. At no point did anyone from  
 21 Fairchild approach us and say this number looks  
 22 out of line, could we send consultants, can we  
 23 consult with your consultants or consult with  
 24 the plant to determine what this cost is.

25 Q. Turn to tab 17 again, sir,

Page 1088

1 JOHN LEASE - CROSS  
 2 parking lot to Fairchild before sending them the  
 3 bill, the information being assessments and cost  
 4 estimates?

5 A. This is the same issue we spoke  
 6 about at St. Cosme. This was an ongoing issue  
 7 before acquisition we can debate about what  
 8 number actually is the correct number, but I  
 9 received the 350,000 Euro estimate directly from  
 10 the plant manager. When I showed him the issues  
 11 we went -- he provided the information in this  
 12 table.

13 So if the plant manager has this  
 14 information in his possession of this magnitude,  
 15 this is an issue that the facility had planned  
 16 to undertake and complete to comply with the  
 17 permit.

18 Q. The facility had a quote for 42,000  
 19 we just looked at; right, Mr. Lease?

20 A. That was in May of 2002 when ERM  
 21 came through. If the project was reviewed, if  
 22 other issues related to site issues for things  
 23 such as hazardous chemical storing, secondary  
 24 containment, storm water management, which were  
 25 compliance issues included in this project that

Page 1090

1 JOHN LEASE - CROSS  
 2 Mr. Miller's letter, let's look at what he says  
 3 paragraph 2. He says "In light of the foregoing  
 4 Fairchild is unable to determine and in any  
 5 event disputes number 2 says whether estimated  
 6 costs in those tables are justified. Those  
 7 estimated costs include the 350,000 Euro parking  
 8 lot cost." Right, Mr. Lease?

9 A. Yes.

10 Q. He is saying we are questioning  
 11 whether or not that is justified. He goes on to  
 12 say, "So that we can discuss this with you  
 13 further, please provide us with the  
 14 documentation." Right?

15 A. That is what he is asking.

16 Q. In the two-way street he is driving  
 17 toward you, he say saying give me documentation  
 18 so we can discuss it; right?

19 A. Yes.

20 Q. Mr. Harvey part of that two-way  
 21 street writes back and says it is coming;  
 22 doesn't he?

23 A. As I mentioned to you, Mr. Harvey  
 24 was not aware of all the information that was  
 25 available or not available in this process, he

15 (Pages 1087 to 1090)

## 1 JOHN LEASE - CROSS

2 was responding to Mr. Miller's contention none  
 3 of these issues were subject of a notice of  
 4 violation. They weren't planning to pay for it  
 5 anyway. They didn't see any environmental  
 6 condition in their view. That was the sentiment  
 7 conveyed in these letters from Mr. Miller.

8 Q. But Mr. Harvey doesn't say that,  
 9 does he? He says I am going to give you  
 10 documentation.

11 A. Mr. Harvey, as I mentioned, was an  
 12 attorney responding primarily to Mr. Miller's  
 13 contention any issue to be indemnifiable  
 14 required a notice of violation from an agency.

15 Q. You were cc'd on Mr. Harvey's  
 16 letter; right?

17 A. Yes.

18 Q. You never write Mr. Miller to tell  
 19 him I am revoking Mr. Harvey's promise; did you?

20 A. I didn't respond to every line item  
 21 in every letter. There was a lot of  
 22 correspondence and lot of information flowing.  
 23 If I missed that point you can blame me for  
 24 that. But, frankly, the fact is these issues on  
 25 site were known to Fairchild. They were

## 1 JOHN LEASE - CROSS

2 A. Not any condition in the operating  
 3 permit. Those that related to EHS. When we did  
 4 the analysis of this issue with our experts in  
 5 France, in compliance and regulations and spoke  
 6 with the individuals at the plant who were  
 7 responsible for EHS, they came to the conclusion  
 8 this project was an EHS project.

9 Q. Now Phase I is a you pointed out to  
 10 me says it is not a strict EHS issue; right?

11 A. That is the, that is that  
 12 assessor's opinion who did the Phase I.

13 Q. That is the Phase I you provided to  
 14 Mr. Miller and to Fairchild?

15 A. That's correct.

16 Q. As far as Fairchild knew Alcoa's  
 17 consultants said it was not a strict EHS issue;  
 18 right?

19 A. There may have been parts of the  
 20 parking lot that were not strictly EHS, but  
 21 there were parts of the parking lot project that  
 22 were.

23 Q. My question Fairchild, the  
 24 communication Alcoa provided to Fairchild on  
 25 this issue included the comment it is not a

## 1 JOHN LEASE - CROSS

2 noncompliance issues that needed to be resolved.  
 3 It was clear we had a process in place to  
 4 identify them as noncompliance and verify them  
 5 we were going to go forward to fix this issue  
 6 because it was a liability to our company as  
 7 long as it remained unresolved.

8 Q. Let's talk about the issue  
 9 regarding the parking lot. You say it is a  
 10 noncompliance issue. It says here in Mr. Snee's  
 11 chart adopted from ERM's Phase I hired by you,  
 12 it is not a strict EHS issue. How is providing  
 13 parking spaces an environmental issue,  
 14 Mr. Lease?

15 A. It says right in front it is part  
 16 of the integrated EHS operating permit, which is  
 17 EHS.

18 Q. Operating permit in France; right?  
 19 Is that what you're referring to?

20 A. Yes.

21 Q. Is your testimony any issue under  
 22 that operating permit, no matter how unrelated  
 23 to the environment qualifies as a Fasteners  
 24 Environmental Condition if there is  
 25 noncompliance with the permit?

## 1 JOHN LEASE - CROSS

2 strict EHS issue; right?

3 A. I don't know if that was verbatim  
 4 what was stated in the Phase I.

5 Q. You told me before it was when I  
 6 pointed out the language?

7 A. I said these issues were distilled  
 8 from the Phase I reports. I don't know if the  
 9 parenthetical insertion of not a strict EHS  
 10 issue is Mr. Snee's opinion or if it was in the  
 11 report. I can't attest to that at this point.

12 Q. At no point following Mr. Miller's  
 13 letter which not only asked for cost estimates  
 14 but also asked for documentation supporting the  
 15 claims did you say, hey, that is an EHS issue  
 16 because of X, Y, Z you never responded; did you?

17 A. I felt the information provided in  
 18 my table was sufficient documentation and  
 19 supported the claim.

20 Q. Let's talk about machine guarding  
 21 at Toulouse, our favorite topic. What does it  
 22 say in your chart, this is now tab 16 your page  
 23 a lot of zeros 12, do you see the entry about  
 24 machine guarding there, sir, second up from the  
 25 bottom?

Page 1095

1           JOHN LEASE - CROSS  
 2       A. I see the machine guarding  
 3       category.  
 4       Q. Yes. Do you see it? Do you see  
 5       it, sir?  
 6       A. Machine guarding?  
 7       Q. Yes.  
 8       A. Yes.  
 9       Q. How much did Alcoa spend on machine  
 10      guarding in Toulouse to date?  
 11      A. To date --  
 12      Q. You can go to tab 38 if you like.  
 13      A. \$444,000.  
 14      Q. Before spending that kind of money  
 15      Alcoa performed a survey or assessment like we  
 16      looked at yesterday for Fullerton; right?  
 17      A. Yes, we did.  
 18      Q. You never sent that to Fairchild;  
 19      right?  
 20      A. What's that.  
 21      Q. Survey about machine guarding at  
 22      Toulouse.  
 23      A. Well, I don't know if we did a  
 24      survey at Toulouse, frankly.  
 25      Q. I thought you just said you did?

Page 1097

1           JOHN LEASE - CROSS  
 2       estimate the cost for each machine.  
 3       THE ARBITRATOR: So they wouldn't  
 4       be the one to do the work, they would have to  
 5       hire someone else?  
 6       THE WITNESS: I think it could be  
 7       done in some cases the consultant could  
 8       actually, was qualified to install the guards.  
 9       In other cases --  
 10      THE ARBITRATOR: Did they bid  
 11      these projects, how did they go about that?  
 12      THE WITNESS: For the actual --  
 13      THE ARBITRATOR: For the work in a  
 14      place like this you're talking about, Toulouse.  
 15      Do you know what they did at Toulouse?  
 16      THE WITNESS: I think at  
 17      Toulouse, I'm not certain, but for local  
 18      projects they could go to local vendors and bid  
 19      them out. It was dependent really on the  
 20      capabilities that existed in that particular  
 21      area for this type of work.  
 22      THE ARBITRATOR: Thank you.  
 23      Q. Did Alcoa employ a competitive bid  
 24      process with respect to say machine guarding?  
 25      A. For all of them, I don't know.

1           JOHN LEASE - CROSS  
 2       A. Sorry, I thought you were talking  
 3       about Fullerton.  
 4       Q. No. I was saying like the one we  
 5       saw at Fullerton.  
 6       A. I don't know what specifically was  
 7       done as far as surveys, if anything at Toulouse.  
 8       THE ARBITRATOR: Do you bid these  
 9       things out when you have a project? How do they  
 10      go about deciding which machines to fix, what  
 11      kind of fix to put on them, how much it is going  
 12      to cost? How do they go about that?  
 13      THE WITNESS: Well, typically we  
 14      would hire a consultant to do the survey, which  
 15      would define, you know, the scope of the  
 16      compliance requirements to achieve compliance.  
 17      They would, in essence, prepare a one sheet  
 18      solution which is kind of like a cookbook. Say  
 19      here are the deficient areas, here is what you  
 20      need to do to fix them, put this guard on this  
 21      piece of the equipment to keep people from  
 22      putting their hands in.  
 23      THE ARBITRATOR: They give you  
 24      estimates, costs?  
 25      THE WITNESS: Yes. They would

Page 1098

1           JOHN LEASE - CROSS  
 2       Typically the Alcoa process for conducting  
 3       outside work does include competitive bidding.  
 4       We also have a process whereby we select certain  
 5       consultants based on their capabilities and we  
 6       negotiate low rates, lower rates than they would  
 7       offer commercially due to the leverage that  
 8       Alcoa has in terms of its use of these  
 9       consultants. So those are called Master Service  
 10      Agreements.  
 11      Q. But you don't know in this  
 12      situation if there was competitive bid process?  
 13      A. For this particular project, I  
 14      don't know how they bid the work out.  
 15      Q. Back just to finish the discussion  
 16      of machine guarding at Toulouse, Mr. Snee's  
 17      chart on page 20 of this chart, 57177.  
 18      A. Page 20?  
 19      Q. Yes.  
 20      THE ARBITRATOR: What exhibit?  
 21      MR. ZUROFSKY: Mr. Snee's chart, I  
 22      guess 430 we introduced.  
 23      (Arbitration Exhibit 430  
 24      was marked.)  
 25      THE ARBITRATOR: Mr. Snee's chart

17 (Pages 1095 to 1098)

1 JOHN LEASE - CROSS  
 2 is 73, isn't it?

3 MR. ZUROFSKY: 73, previously  
 4 marked. Right. Sorry.

5 Q. Do you see page 20, sir?

6 A. I'm on 20.

7 Q. The middle line in the chart, does  
 8 that relate to the machine guarding project at  
 9 Toulouse that we just discussed that ended up  
 10 being \$444,000?

11 A. Yes.

12 THE ARBITRATOR: You are on  
 13 page 20?

14 MR. ZUROFSKY: Yes. In the middle  
 15 row.

16 Q. That's discussing the machine  
 17 guarding project. This is based upon Mr. Snee's  
 18 review of the Phase I reports; right?

19 A. That's my understanding of what he  
 20 did.

21 Q. Which are the reports provided to  
 22 Fairchild; right?

23 A. Yes.

24 Q. He comes up with an estimate, if  
 25 you look over on the right for EPC, estimated

1 JOHN LEASE - CROSS  
 2 to Mr. Hodge was in Euros, we don't have to do  
 3 the conversion was roughly 180,000 Euros; right?

4 A. That's correct.

5 Q. A little over 200,000, somewhere  
 6 over \$200,000; right?

7 A. Approximately.

8 Q. It is 444,000 today at Toulouse;  
 9 right for machine guarding?

10 A. Correct.

11 Q. You're not done yet; right?

12 A. I don't know if they are done or  
 13 not.

14 Q. Are you done at any of the  
 15 facilities, do you know with machine guarding  
 16 work?

17 A. There are some we may be finished  
 18 with.

19 Q. How far out, how many years? How  
 20 many years are you planning to work on the  
 21 machine guarding?

22 A. To complete all of the machines?

23 Q. Yes.

24 A. I think the plants would forecast  
 25 out two to three years in advance maybe 2007,

1 JOHN LEASE - CROSS  
 2 probable cause and reasonable worst case, of  
 3 between 27 and 40,000?

4 A. Mr. Snee comes up with the  
 5 estimate?

6 Q. Yes.

7 A. I don't think that is Mr. Snee's  
 8 estimate.

9 Q. Whose estimate is it?

10 A. I think it is probably from ERM.

11 Q. But it is an estimate Mr. Snee has  
 12 in his chart?

13 A. It is not his estimate, it is here.

14 He didn't go through each one of these and  
 15 estimate them individually I think he was just  
 16 compiling data from existing report.

17 Q. From the Phase Is. So from the  
 18 Phase I process the number is between 27 and  
 19 40,000 estimated, the worst case scenario is  
 20 40,000 for machine guarding at the Toulouse  
 21 facility; correct?

22 A. That is what the reports say.

23 Q. You spent \$444,000; right?

24 A. Yes.

25 Q. The estimate in the chart you send

1 JOHN LEASE - CROSS

2 this is 2007. Maybe 2008.

3 Q. So period of six years or so, five  
 4 to six years following acquisition; right?

5 A. I am not sure they create forecasts  
 6 right at the time of the acquisition. I don't  
 7 know what the business unit was doing in terms  
 8 of their forecasting, when they started or what  
 9 their projections were.

10 Q. We looked at back on tab 41.

11 THE ARBITRATOR: These machine  
 12 guardings are required by local authority,  
 13 are they, or pursuant to some local regulation?

14 THE WITNESS: Yes.

15 THE ARBITRATOR: They allow you  
 16 six years to do this work? If it is a hazard to  
 17 an employee's health isn't there any time limit  
 18 you can spend doing it?

19 THE WITNESS: It is a good question.

20 These guards are required either by local or  
 21 national level legislation, I guess the  
 22 practicality is that all machines in cases like  
 23 this where numerous machines are noncompliant it  
 24 is very difficult to go in and do them all at  
 25 one time. It takes the machine down, has to be

Page 1103

Page 1105

1 JOHN LEASE - CROSS  
 2 reconfigured to allow the guarding to be put in  
 3 place.

4 So what Alcoa typically does is  
 5 identifies the highest risk machines. If you  
 6 recall yesterday we had that risk matrix.

7 THE ARBITRATOR: Yes.

8 THE WITNESS: They then go  
 9 through highest risk machines first and work  
 10 their way through until the end.

11 In the interim you can implement  
 12 what are called administrative controls which  
 13 limit the workers' ability to actually access  
 14 the machine at a critical point. Those are not  
 15 preferred because employee can actually  
 16 disregard them. So the preferred solution is to  
 17 put an engineered guard in that is effective and  
 18 meets the requirements.

19 Q. We have gone through the first  
 20 three letters on the chart on tab 41; right?

21 A. Okay.

22 Q. Skip Torrance for a minute because  
 23 I understand we may have a document issue, I  
 24 will go to City of Industry under safety  
 25 compliance. Do you see that?

Page 1104

Page 1106

1 JOHN LEASE - CROSS

2 A. Back on.

3 Q. Tab 41, the chart City of Industry;  
 4 right?  
 5 A. We are under equipment safety.  
 6 Q. It is listed there John Lease to  
 7 Mike Hodge 2004. That document is tab 20 in  
 8 your binder from Mr. Chesler. Do you remember  
 9 yesterday there was some discussion about  
 10 Mr. Miller's letter referring to Torrance  
 11 facility when the "Re:" line was the Torrance  
 12 facility?

13 A. Say that again.

14 Q. There was some discussion about  
 15 Mr. Miller's letter had reference to the  
 16 Torrance facility but the "Re:" line was the  
 17 Fullerton facility, do you remember that?

18 A. Yes.

19 Q. Typographical letters and  
 20 oversights happen in letters; right, Mr. Lease  
 21 from time to time?

22 A. That is a question.

23 Q. Look at your letter from City of  
 24 Industry, you dated it 2003. But I think you  
 25 told us actually it was 2004; right?

1 JOHN LEASE - CROSS

2 A. Yes.

3 Q. Must have missed it in the  
 4 proofreading; right? Let's look at the letter.  
 5 This is the letter listed as providing notice  
 6 for City of Industry; right?

7 A. Yes.

8 Q. What kind of notice is this of our  
 9 three buckets of notice, what type of notice is  
 10 this, sir?

11 A. This is primarily a -- well it is  
 12 notice of costs incurred primarily. As I  
 13 mentioned yesterday, we felt that the Phase I  
 14 reports and the four letters related to the  
 15 major facilities in former Fairchild plants  
 16 represented notice of environmental conditions  
 17 at all locations.

18 Q. So the City of Industry was not one  
 19 of those four facilities that had the four  
 20 letters we talked about yesterday?

21 A. No. There was not a gap analysis  
 22 for that facility.

23 Q. So this is a letter basically  
 24 saying work has already started, here are the  
 25 bills. It is a notice of liability letter;

1           JOHN LEASE - CROSS

2       Q. Your version, tab 20 of the binder,  
3 Bates page will be FC 253.

4       A. Okay.

5       Q. And then 254 actually is the page I  
6 want to look at. 256 is an invoice from  
7 Premiere Safety; right?

8       A. Yes it is.

9       Q. It is an invoice you are sending to  
10 Fairchild for work done by premiere safety;  
11 right?

12      A. Yes.

13      Q. Premiere safety was a contractor  
14 used by Alcoa in this case at the Unruh and City  
15 of Industry facility?

16      A. City of Industry, I am not sure  
17 which one of the two plants it is.

18      Q. If you look at the – it looks like  
19 it covers both. Look at entries on the invoice,  
20 first two relates to Unruh. Third says Unruh,  
21 transfer of stuff from Unruh and Temple?

22      A. Right.

23      Q. I want to draw your attention to  
24 the paragraph that begins "These draft procedure  
25 for lock, tag and verify and confined space

1           JOHN LEASE - CROSS

2       guarding, lock tag verify. So components of the  
3 Alcoa standard would include much of what is  
4 required in OSHA.

5       Q. Mr. Lease, I believe I asked you at  
6 your deposition if you had compared Alcoa  
7 standards with OSHA or CAL OSHA standards; have  
8 you ever done that?

9       A. Line by line.

10      Q. Let's look at page 232.

11      A. Okay.

12      Q. Here we're talking about Alcoa  
13 standard 33.013. Do you know what that is? It  
14 is referenced in 231, that's why. Do you know  
15 which one that is?

16      A. In my letter, 231?

17      Q. On your deposition, 231 to 232. I  
18 apologize. Do you still have your transcript  
19 there from yesterday?

20      A. Page 231 in the deposition?

21      Q. Yes. I realize here we are  
22 talking about a specific Alcoa standard. But I  
23 want to ask you the question about more  
24 generally.

25      A. Okay. I'm there.

1           JOHN LEASE - CROSS

2 entry." Do you see that there?

3       A. Yes, I do.

4       Q. "They ship for SPA at COI." Do you  
5 know what SPAs are?

6       A. Yes.

7       Q. What are they? What is SPA?

8       A. In this context it would be, I  
9 think the single point accountable person which  
10 is the individual that would have responsibility  
11 for this particular EHS area.

12      Q. Then COI? City of Industry; right?

13      A. City of Industry.

14      Q. It says "to review to ensure all  
15 OSHA and Alcoa compliance directives are met."  
16 Do you see that?

17      A. I see that.

18      Q. This is an invoice for work done in  
19 part at least to ensure compliance with Alcoa --  
20 Alcoa compliance requirements; right?

21      A. No. We talked earlier regarding  
22 Alcoa standards such as lock tag verify and  
23 machine guarding and so forth, there is overlap,  
24 significant overlap in countries with complete  
25 regulatory citations for things such as machine

1           JOHN LEASE - CROSS

2       Q. 231 into 232, we are talking about  
3 difference between OSHA standards and Alcoa  
4 standards. On 232 I asked you "Do you have any  
5 knowledge, sir, in this particular instance" I  
6 was talking about standard 33.1013 the  
7 recommendation being made here is being made to  
8 comply with OSHA or CAL OSHA standard? Do you  
9 see that?

10      A. Yes.

11      Q. You said "As I said earlier I am  
12 not a safety expert. You would need to talk to  
13 the individuals involved here to see if there  
14 was, you know, what the difference was between  
15 these."

16      Do you see that?

17      With respect to -- are you a safety  
18 expert when it comes to lock tag verify issues?

19      A. No.

20      Q. Do you feel competent to testify as  
21 an expert between the Alcoa standards and OSHA  
22 standards on that issue?

23      A. I think I was just making a general  
24 statement.

25      Q. It does list here on the invoice,

Page 1111

Page 1113

1 JOHN LEASE - CROSS  
 2 back now in tab 20, work was done to comply not  
 3 just with OSHA but OSHA and Alcoa compliance;  
 4 right?

5 A. That's what is listed on the  
 6 invoice.

7 Q. Two different things; right?

8 A. With overlap.

9 Q. They say, they are listed as two  
 10 different things; right?

11 A. They are listed as two different  
 12 things.

13 Q. You sent this invoice to Fairchild  
 14 for reimbursement under the agreement; right?

15 A. Yes.

16 Q. You agree that work done to comply  
 17 with Alcoa standards is not reimbursable under  
 18 the agreement; correct?

19 A. That is in excess of the regulatory  
 20 requirements.

21 Q. Now back to our chart on tab 41.  
 22 We have looked at now the correspondence under  
 23 equipment safety for City of Industry. That was  
 24 the document we just looked at.

25 MR. CHESLER: Sorry, what the tab

1 JOHN LEASE - CROSS  
 2 are we at?

3 MR. ZUROFSKY: 41. Second page.

4 Q. Right. We have been working our  
 5 way down this chart, Mr. Lease; right?

6 A. Yes.

7 Q. So the one under City of Industry,  
 8 under equipment safety was dated March 9, 2004  
 9 letter from you to Mr. Hodge. We just looked at  
 10 that document; right?

11 A. Yes, we did.

12 Q. That document as you described it  
 13 was a notice of liability, what fell into the  
 14 notice of liability category, right you said  
 15 here is work that is started, here is the cost,  
 16 here is the invoices?

17 A. It was somewhat of also detailed  
 18 notice that further explained the general  
 19 categories we had provided before.

20 Q. The work had started; right?

21 A. Yes, it had.

22 Q. So, let's move down to Fullerton  
 23 now. This is -- I think we only have one more  
 24 after this to do because they all repeat after  
 25 that. Or two more.

Page 1112

Page 1114

JOHN LEASE - CROSS

1 Q. Again, you were cc'd on that letter  
 2 and never sent Mr. Miller a correction on his  
 3 letter; right?

4 A. That's correct.

5 Q. So, but Fullerton is one of the  
 6 facilities that is referred to in Mr. Harvey's  
 7 letter; right?

8 A. It was one of the facilities that  
 9 was in sandy's response, correct.

10 Q. We looked at the machine guarding  
 11 number before. I just want to do one or two  
 12 other of these and we can just move off of this.  
 13 We looked at machine guarding. If you look on  
 14 the, I guess second page of your chart; so the  
 15 Bates stamp, if we have the same version, which  
 16 we may or may not, tab 14, we have the sale  
 17 version, 41.

18 THE ARBITRATOR: Tab 14?

19 MR. ZUROFSKY: Yes, your Honor.

20 Q. We looked at machine guarding that  
 21 had an estimate of \$58,000 yesterday. It turned  
 22 out to be over a million dollars as of today,  
 23 right, Mr. Lease?

24 A. What was your figure?

1           JOHN LEASE - CROSS  
 2       Q. 58,000 as of this letter.

3 Yesterday you told me it was 1,032,289 as of end  
 4 of last year?

5       A. From the liability table?

6       Q. Yes.

7       A. Yes.

8       Q. They are still doing machine  
 9 guarding work at Fullerton; right?

10      A. I believe they are.

11      Q. Next item down is fall control  
 12 listed there as 45,000. How much has been spent  
 13 to date on fall control at Fullerton?

14      A. Fall protection compliance,  
 15 \$151,000.

16      Q. So 151,000. The number in the  
 17 chart is 45. The number in the chart you sent  
 18 to Fairchild is 45; right?

19      A. That's correct.

20      THE ARBITRATOR: Where, that is  
 21 the next one here underneath the machine  
 22 guarding; right?

23      MR. ZUROFSKY: Right, your Honor.  
 24 Listed as 45,773. Mr. Lease told us it is over  
 25 150,000.

1           JOHN LEASE - CROSS

2       Q. It says here in your description,  
 3 maybe it is just not clear enough from your  
 4 chart for anyone to figure it out. It says  
 5 handling of combustible liquids; right?

6       A. Yes.

7       Q. The word, in chart 38 for  
 8 combustion safety says the word combustion  
 9 safety line 50 lists \$154,000; doesn't it?

10      A. Well, that is what has been listed  
 11 for combustion safety but I am not sure that  
 12 corresponds to this particular entry in the  
 13 table.

14      Q. So if the entry is not on the table  
 15 you didn't tell Fairchild about it beforehand;  
 16 right?

17      A. I can't say either way. I don't  
 18 have the information related to the specific  
 19 project to detail what is covered in it.

20      Q. You just can't tell based upon the  
 21 description in your letter to Mr. Hodge; right?

22      A. I can't tell what the individual  
 23 project titles refer to. That's the detail I'm  
 24 lacking.

25      Q. Sorry?

1           JOHN LEASE - CROSS

2       Q. The next one down is fire  
 3 prevention.

4       A. Yes.

5       Q. It is estimated there at \$28,000;  
 6 right?

7       A. That's correct.

8       Q. Can you tell me how much has been  
 9 spent to date on fire prevention at the  
 10 Fullerton facility?

11      A. 2,800.

12      Q. \$2,800, are you sure? Let's look  
 13 at tab 38. Where are you looking?

14      A. Fire safety.

15      Q. It says here "The work is not  
 16 limited to permit program, storage, handling of  
 17 flammable and combustible liquids controlling  
 18 use storage and handling of flammable gases and  
 19 dispensing of flammable and combustible  
 20 liquids."

21      Let's look at Fullerton, the work  
 22 that has been done on that doesn't that include  
 23 combustion safety, sir?

24      A. I don't know if that is a straight  
 25 match or not.

1           JOHN LEASE - CROSS

2       A. That's the detail I am lacking  
 3 right now.

4       Q. In tab 38, that is what you are  
 5 referring to?

6       A. Yes. My summary table.

7       Q. That is the same form of table we  
 8 will look at it a little later in which you  
 9 provided what you called notice to Fairchild  
 10 with those asterisk system; right?

11      A. This table?

12      Q. Not this exact version, earlier  
 13 version?

14      A. Yes.

15      Q. That is kind of thin descriptions  
 16 you said you can't figure out what the project  
 17 was with the same descriptions contained in the  
 18 earlier table sent to Fairchild; right?

19      A. Sorry.

20      Q. You just told me you couldn't tell  
 21 from entry on tab 38 what combustion safety  
 22 related to; right?

23      A. That's correct. I don't have  
 24 detailed understanding of what that is for.

25      Q. That is the only description, if

<p style="text-align: right;">Page 1119</p> <p>1           JOHN LEASE - CROSS      2 you go back, that you provided in those asterisk      3 tables as well; right?      4     A. Combustion safety, the project      5 titles didn't change.      6     Q. Right. I am saying that is what you      7 told Fairchild was 154,000, combustion safety;      8 right?      9     A. In this table, yes.      10    Q. You can't figure out if that is the      11 same project as listed in your letter from June      12 of 2003?      13    A. I can't figure out what all is      14 included in that number.      15    Q. Let's move on to the next -- that's      16 Fullerton. Let's move to the next item in our      17 chart from tab 41, this is the letter under St.      18 Cosme, under St. Cosme we have first two are      19 ones we looked at already; right?      20    A. The first two letters?      21    Q. Yes. Those are the ones we looked      22 at at the top of the chart.      23    A. Okay.      24    Q. Are you with me?      25    A. Yes. I'm with you.</p>	<p style="text-align: right;">Page 1121</p> <p>1           JOHN LEASE - CROSS      2 on this subject, the miscellaneous sites. Okay?      3     A. Okay.      4     Q. Letters are separated by yellow      5 sheets.      6     A. Okay.      7     Q. So, move your way forward      8 chronologically until we get to December 13,      9 2004, it should be, I think it is the sixth      10 letter. In any event, chronologically forward      11 to December 13, 2000?      12    A. I don't have yellow sheets in my      13 book.      14    Q. I apologize then.      15    A. December 13.      16    Q. 2004.      17    A. Okay.      18    Q. Do you see it there?      19    A. I'm there.      20    MR. ZUROFSKY: Your Honor?      21    THE ARBITRATOR: Yes.      22    Q. Is this the letter that is referred      23 to in the chart on tab 41 from you to      24 Mr. Beckford on December 13, 2004?      25    A. Yes.</p>
<p style="text-align: right;">Page 1120</p> <p>1           JOHN LEASE - CROSS      2     Q. The third letter, letter from John      3 Lease to E. Beckford on December 13, 2004 is one      4 we have not looked at yet; right?      5     A. I believe that is true.      6     Q. Let's take a look at it I am not      7 sure it is in your binder. It may not be. In      8 which case I will have to give it to you. It      9 may be in my binder.      10    Counsel, do you know if that letter      11 referenced there is in Mr. Lease's binder?      12    MR. CHESLER: It is not.      13    Q. Let's go to the binder we handed      14 you. It is going to be easiest to work from the      15 back. Do you see that there?      16    A. What am I looking at?      17    Q. The binder I handed you, the      18 correspondence binder. There is tabs by sort of      19 the name of the facilities. The last tab is      20 multiple sites, miscellaneous.      21    A. Okay.      22    Q. Right?      23    A. Okay.      24    Q. If you look under that, these are      25 chronologically in order sort of moving forward</p>	<p style="text-align: right;">Page 1122</p> <p>1           JOHN LEASE - CROSS      2     Q. This relates to lock tag and verify      3 noncompliance issues at the "Re:" line?      4     A. Yes.      5     Q. Looking at this letter, this is      6 similar letter to the one we just looked at      7 regarding -- withdrawn.      8       If you go to the second paragraph      9 of this letter.      10    A. Okay.      11    Q. It says "These findings necessitate      12 a more thorough review and survey of each      13 facility's LTV programs be undertaken to      14 determine full scope of noncompliance." Do you      15 see that?      16    A. Yes.      17    Q. Does that tell you that Alcoa did      18 undertake surveys at each of these facilities      19 regarding lock tag verify?      20    A. That refreshes my recollection.      21    Q. You did, yes?      22    A. Pardon?      23    Q. Alcoa did?      24    A. I believe that's the case, yes.      25    Q. Alcoa never sent those surveys to</p>

1           JOHN LEASE - CROSS  
 2 Fairchild in advance of incurring costs with  
 3 regard to the work; right?  
 4       A. The LTV surveys?  
 5       Q. Yes, at these facilities?  
 6       A. I don't recall sending them. No.  
 7       Q. It goes on to say "As well as the  
 8 required corrective actions to bring the  
 9 facility's programs into compliance surveys are  
 10 completed and corrective actions are being  
 11 implemented at the following facilities."  
 12      Do you see that?  
 13     A. Yes.  
 14     Q. This is another instance in which  
 15 you refer to surveys that were not provided to  
 16 Fairchild, and two are sending Fairchild a bill  
 17 for work already started; right?  
 18     A. We are sending them a bill for work  
 19 that's being done, correct.  
 20     Q. That is the letter referred to in  
 21 the chart between you and Mr. Beckford on tab  
 22 41; right?  
 23     A. Let me check that's correct.  
 24     Q. The next document in my binder is  
 25 the letter dated December 20, 2004. I think

1           JOHN LEASE - CROSS  
 2 that is the last chronological letter listed in  
 3 the chart on tab 41.  
 4       THE ARBITRATOR: What is that  
 5 under?  
 6       MR. ZUROFSKY: Go down, your  
 7 Honor, to the Nemesvamos facility and Kelkheim  
 8 facility there is a reference to a letter J.  
 9 Lease to E. Beckford December 20, 2004. I  
 10 believe and Mr. Lease can tell us, that is the  
 11 letter that we're looking at, the next one we're  
 12 looking at in my binder is that letter.  
 13       THE ARBITRATOR: In this book  
 14 here?  
 15       MR. ZUROFSKY: Yes. After the one  
 16 we just looked at for December 13. It is the  
 17 next one.  
 18       A. Which letter are we on?  
 19       Q. December 20, 2004. The one after  
 20 the December 13 letter related to lock tag  
 21 verify. Do you see it?  
 22       A. Yes.  
 23       Q. I believe chronologically this is  
 24 the last letter listed in the chart on tab 41  
 25 that we discussed, remember we talked about

1           JOHN LEASE - CROSS  
 2 nothing past December 31, 2004?  
 3       A. Yes.  
 4       Q. This is the last one in the chain  
 5 chronologically. Again this looks familiar to  
 6 the last letter if you look at the second  
 7 paragraph. This one relates however to machine  
 8 guarding; right, sir?  
 9       A. Yes.  
 10      Q. Second paragraph "These findings  
 11 necessitated that a more thorough review and  
 12 survey of each facility's machine guarding  
 13 programs be undertaken to determine the scope of  
 14 noncompliance issues as well as the needed  
 15 corrective actions to bring the noncompliance  
 16 equipment into compliance."  
 17      It continues on "The detailed  
 18 surveys were conducted, detailed surveys were  
 19 conducted and corrective actions are being  
 20 implemented at the following facilities to bring  
 21 the machine guarding programs into compliance  
 22 with existing governmental requirements." Do you  
 23 see that?  
 24       A. Yes.  
 25       Q. That lists eight facilities, City

1           JOHN LEASE - CROSS  
 2 of Industry, Fullerton, Kelkheim, Stoughton, St.  
 3 Cosme, Torrance, Simi Valley and Neenesvamos. Do  
 4 you see that?  
 5       A. Yes.  
 6       Q. Again, like the last letter, this  
 7 is a situation where you have done surveys on  
 8 these issues; right?  
 9       A. You have identified issues in the  
 10 initial review of the facilities in Phase Is and  
 11 site assessments yes.  
 12       Q. You say detailed surveys were  
 13 conducted. Those detailed surveys referenced in  
 14 the second paragraph are surveys that followed  
 15 on the original site assessment; correct?  
 16       A. After we, we indicated we were  
 17 going to do surveys at the facilities, which is  
 18 what we did.  
 19       Q. You did those; right?  
 20       A. We did them.  
 21       Q. One of the ones we looked at  
 22 yesterday Fullerton is listed here, that is the  
 23 box we talked about yesterday?  
 24       A. Yes.  
 25       Q. There is similar surveys for all

Page 1127

1           JOHN LEASE - CROSS  
 2 these facilities?  
 3       A. Yes.  
 4       Q. They were done by the time of this  
 5 letter?  
 6       A. That's what is stated here, yes.  
 7       Q. At this letter the work had already  
 8 started at those facilities; right?  
 9       A. For corrective actions?  
 10      Q. Yes.  
 11      A. That's correct.  
 12      Q. You were sending Fairchild the bill  
 13 for some of that work; right?  
 14      A. Yes. Because the assessment we  
 15 performed indicated that all of the facilities  
 16 had machine guarding compliance issues. The  
 17 surveys confirmed that. And we were going about  
 18 fixing the problem.  
 19      Q. You spent \$729,000 at the time of  
 20 this letter doing that work; right?  
 21      A. I believe, yes.  
 22      Q. This falls again into the category  
 23 of notice of bills already incurred, notice of  
 24 liability; right?  
 25      A. What was your first comments.

Page 1129

1           JOHN LEASE - CROSS  
 2 letters that Mr. Miller responded to. And that  
 3 was the subject of Mr. Harvey's letter; right?  
 4       A. In the context of the contention  
 5 that anything that was indemnifiable had to be  
 6 in notice of violation from Mr. Miller.  
 7       Q. I am not sure I understand the  
 8 answer. My question was, this is a letter to  
 9 which Mr. Miller responds and then is the  
 10 subject of Mr. Harvey's response of August 1,  
 11 2003; right?  
 12      A. Yes. Mr. Harvey responded to  
 13 Mr. Miller's letter.  
 14      Q. This is one of the four gap  
 15 analysis facilities you say provide notice for  
 16 all of the 16 facilities; right?  
 17      A. Correct.  
 18      Q. On this facility, let's look at  
 19 some of the numbers discussed here. On the  
 20 chart, look at the second row, the facility is  
 21 not complying. Do you see that?  
 22      A. Yes.  
 23      Q. Estimate there is 10,000; right?  
 24      A. Yes.  
 25      Q. How much -- go to tab 38 if you

Page 1128

1           JOHN LEASE - CROSS  
 2       Q. Notice of liability, bills already  
 3 incurred.  
 4       A. Well, we had I think in our notice  
 5 of the environmental condition provided notice  
 6 of the condition. This would have been the  
 7 first correspondence related to the costs that  
 8 were being incurred for the condition we found.  
 9       Q. Sorry, what?  
 10      A. For the machine guarding corrective  
 11 actions.  
 12      Q. That work had already started;  
 13 right?  
 14      A. Yes, it had.  
 15      Q. We are done chronologically. I  
 16 have to circle back to one. Then we will take  
 17 the break. We have one more letter we skipped  
 18 over, then we can obviously take a break.  
 19      So this is previously introduced as  
 20 Exhibit 69. The reason I had to pause there is  
 21 a different version in my binder? This is the  
 22 letter, sir, is it not referenced with respect  
 23 to Torrance in the chart on tab 41. Okay?  
 24      A. Yes.  
 25      Q. So here again is one of these

Page 1130

1           JOHN LEASE - CROSS  
 2 like.  
 3       MR. ZUROFSKY: Your Honor, I am on  
 4 page --  
 5       THE ARBITRATOR: I have it.  
 6       Q. How much has Alcoa spent on that  
 7 project?  
 8       THE ARBITRATOR: This is the air  
 9 permit?  
 10      MR. ZUROFSKY: Yes, air permit.  
 11      A. Torrance air compliance survey,  
 12 56,900.  
 13      Q. The next one done on Exhibit 69 is  
 14 lock out tag out verify; right?  
 15      A. In the table?  
 16      Q. Yes.  
 17      A. Yes.  
 18      Q. If you notice just before we get to  
 19 the numbers, if you look in the left-hand  
 20 column, the one under issue description, it says  
 21 there "the facility's lock out tag out verify  
 22 system is not formally implemented and  
 23 procedures are not being followed consistently."  
 24 Do you see that, sir?  
 25      A. I see that.

25 (Pages 1127 to 1130)

## 1 JOHN LEASE - CROSS

2 Q. There were procedures in place at  
 3 the facility with respect to lock out tag out  
 4 verify; right?

5 A. They were inadequate to meet the  
 6 OSHA requirements, but --

7 Q. There were some procedures?

8 A. Ineffective.

9 Q. They were not being followed  
 10 regularly that is what it says here; right?

11 A. And they were ineffective.

12 Q. Didn't say that. Move over,  
 13 estimated cost is 30,000. Right?

14 A. Yes.

15 Q. How much has Alcoa spent on that  
 16 project?

17 A. \$88,000.

18 Q. Next one down confined space?

19 A. I see it.

20 Q. 23,000 estimate?

21 A. Yes.

22 Q. How much has Alcoa spent so far?

23 A. \$59,000.

24 Q. Turn the page if you will on the  
 25 Torrance chart. Estimated cost?

## 1 JOHN LEASE - CROSS

2 A. Machine guarding now?

3 Q. We are on machine guarding.

4 A. 20,000.

5 Q. How much has Alcoa spent to date?

6 A. \$131,000.

7 Q. You are not done yet; right?

8 A. I can't say for Torrance.

9 Q. Next one down, fall protection.

10 A. Sorry, I am looking at the wrong  
 11 table. 20,000.

12 Q. How much has Alcoa spent to date?

13 A. 132,000.

14 Q. Next one down?

15 A. Electrical safety?

16 Q. Yes, sir?

17 A. 30,000.

18 Q. Then how much has Alcoa spent to  
 19 date?

20 A. 100,000.

21 Q. Next one down?

22 A. Mobile equipment.

23 Q. Estimate 15,000.

24 A. 15,000.

25 Q. You spent to date?

## 1 JOHN LEASE - CROSS

2 A. 30,000.

3 Q. Back to tab 41 just to make sure we  
 4 completed our journey here.

5 A. Let me make a comment about these  
 6 discrepancies, if I may. The measures that were  
 7 taken following the survey typically would have  
 8 fixed the problem. It is basic industrial  
 9 operations. When you see an issue and it is  
 10 noncompliance you do and fix it. This isn't  
 11 much more complicated than that.

12 Q. These were just -- sorry.

13 A. So as we continue, you know, we  
 14 identify noncompliance issues at any of these  
 15 facilities, once it is confirmed we fix it. We  
 16 can't continue to operate in noncompliance while  
 17 we wait for cost estimates to be exchanged and  
 18 reviewed. We have to operate in compliance to  
 19 protect the people or meet our permit limit.  
 20 That is the fact of industrial operation in a  
 21 regulated environment.

22 Q. These were preliminary cost  
 23 estimates; right?

24 A. Preliminary. In 2003 they were  
 25 preliminary.

## 1 JOHN LEASE - CROSS

2 Q. They were later updated based upon  
 3 work Alcoa did in terms of surveys and  
 4 assessments and all that, we looked at some of  
 5 those?

6 A. Updated?

7 Q. Yes.

8 A. I think in reality what happened  
 9 was they did a survey identified compliance  
 10 issues, they went and fixed it. I don't know  
 11 that it included a scope of work, work plan.  
 12 These are very basic types of compliance issues  
 13 that require basic fix.

14 Q. Like -- sorry?

15 A. So, facilities just undertook these  
 16 corrective actions.

17 Q. Like the box of documents we saw  
 18 with respect to the Fullerton machine guarding  
 19 with a sheet for every machine; right?

20 A. Yes.

21 Q. Again, that is what Mr. Miller was  
 22 asking you for was updated and finalized cost  
 23 estimates; right?

24 A. That was a box that contained a  
 25 survey for every machine. I am not sure, I

Page 1135

Page 1137

## JOHN LEASE - CROSS

1 don't think every machine has undergone  
 2 corrective action at this point, as I mentioned  
 3 earlier. So a subset of that box was likely  
 4 under corrective action.

5 Q. But those pages in those machines  
 6 we saw as Judge Stapleton asked you yesterday  
 7 have dollar signs of potential costs associated  
 8 with them; right?

9 A. Yeah. I will point out that costs  
 10 to correct the noncompliance situation. These  
 11 issues needed to be addressed and recovered  
 12 under the indemnity.

13 Q. That is the updated cost  
 14 information you and Mr. Harvey promised to  
 15 provide to Fairchild; right?

16 A. I didn't promise to provide that.

17 Q. Let's look at your letter on St.  
 18 Cosme before we take a break since we have to  
 19 make sure we nailed this down. Your letter on  
 20 St. Cosme, tab 12, second paragraph.

21 A. Okay.

22 Q. You say in the second paragraph "As  
 23 the cost estimates are updated and finalized we  
 24 will communicate this information to Fairchild

## JOHN LEASE - CROSS

1 Corporation."

2 Do you see that?

3 A. Yes, I do.

4 Q. You did promise to provide that  
 5 type of information for the St. Cosme facility,  
 6 yes?

7 A. That might have been my intent in  
 8 April of 2003. You know, I can't say we  
 9 provided a project by project, machine by  
 10 machine cost estimate for everything we were  
 11 doing.

12 The fact is when we started this  
 13 work the basis was we would not have any  
 14 corrective action follow-up unless it was  
 15 justified based on regulatory noncompliance. I  
 16 can say that that is the process we followed.

17 So I'm confident the money that has  
 18 been spent to fix these noncompliances is in  
 19 fact justified under the agreement.

20 If we didn't send Fairchild every  
 21 single piece of paper, you can blame us for poor  
 22 document management or inability to transmit  
 23 documents when needed. But in fact the main  
 24 focus of our efforts were to come into

1 JOHN LEASE - CROSS  
 2 compliance. We felt the actions we were  
 3 undertaking were justified based on the  
 4 noncompliance issues we found.

5 Q. Sir, we finished, let's break now.  
 6 We just want to confirm we now looked at every  
 7 letter that is referenced in the last two pages  
 8 of tab 41; right?

9 A. Could you ask your question again,  
 10 sorry.

11 Q. Tab 41, remember we were looking at  
 12 the last two pages of that chart you and  
 13 Mr. Chesler had gone over.

14 A. Yes.

15 Q. I want to confirm we have now  
 16 looked at this morning every letter listed there  
 17 for any of these items because I don't want to  
 18 repeat for each of the items because the letters  
 19 do repeat.

20 A. On page 2.

21 Q. Page 2 and 3, all the compliance  
 22 issues we talked about when we first started  
 23 this journey?

24 A. Did we get through them all?

25 Q. Yes. They repeat. That is why I

Page 1136

Page 1138

## JOHN LEASE - CROSS

1 am asking you. I want to make sure you agree  
 2 with me.

3 THE ARBITRATOR: Pages 2 and 3?  
 4 MR. ZUROFSKY: Of Exhibit 41.

5 THE ARBITRATOR: The ones we have  
 6 seen included all of the ones on these two  
 7 pages?

8 MR. ZUROFSKY: Right. That is what  
 9 I am confirming with the witness.

10 THE ARBITRATOR: Well, they will  
 11 tell you if that is not the case.

12 MR. ZUROFSKY: Fair enough. Then  
 13 let's break.

14 (Recess taken.)

15 MR. CHESLER: Just a housekeeping,  
 16 your Honor, Mr. Zurofsky and I have been  
 17 conferring during the break we are trying to  
 18 manage the logistics of this which are getting  
 19 ever more complicated. We agreed as follows,  
 20 subject to being acceptable to you: We have our  
 21 next witness who is an expert by the name of  
 22 Powell who has an unmoveable obligation  
 23 tomorrow, out of state, in Florida involving the  
 24 EPA in a completely unrelated matter which he

25 27 (Pages 1135 to 1138)

## 1 JOHN LEASE - CROSS

2 can't move.

3 To accommodate that, since this is  
 4 moving not quite at the pace we anticipated, we  
 5 agreed at the lunch break if we are not done  
 6 with Mr. Lease, we will subject to your approval  
 7 suspend the testimony of Mr. Lease at whatever  
 8 stage it is, put Mr. Powell on right after lunch  
 9 so he can make a plane this evening to West  
 10 Florida. Whenever Mr. Powell is done we will  
 11 immediately resume with Mr. Lease wherever we  
 12 left off.

13 MR. ZUROFSKY: Mr. Lease is one of  
 14 the witnesses, not just one of their witnesses,  
 15 he is one of our witnesses, too. We are fine  
 16 with that considering we have been doing this  
 17 sort of combined anyway.

18 THE ARBITRATOR: Fine. You do  
 19 seem to be moving a little slowly from the point  
 20 of view of concluding Alcoa's case this week.  
 21 We have several other witnesses.

22 MR. ZUROFSKY: Right. Let's try to  
 23 pick up the pace now, not speaking too quickly,  
 24 I know, Tammy, you get upset.

25 Q. Mr. Lease, we covered the letters

## Page 1140 JOHN LEASE - CROSS

1 this morning and I wanted to turn now to the  
 2 asterisk items that are on the chart. The  
 3 chart, there is a series of asterisk charts.  
 4 Let's turn to the one on 36, tab 36.

5 A. Okay.

6 Q. If you remember we were talking  
 7 this morning about the compliance issues,  
 8 compliance claims and we identified that the two  
 9 sources of notice that you had put out there  
 10 were those series of letters we looked at this  
 11 morning then the Phase Is right for the  
 12 compliance claims?

13 A. Yes.

14 Q. So, the asterisk items as we went  
 15 over yesterday with your cover letter as you  
 16 said were not the subject of prior notice;  
 17 right?

18 A. That's correct. That is what it  
 19 says here.

20 Q. You were thereby, by virtue of the  
 21 letter, notifying Fairchild about the asterisk  
 22 items; right?

23 A. Well, I think as we pointed out  
 24 when we went through my discussion with

## 1 JOHN LEASE - CROSS

2 Mr. Chesler, there were some items on here that  
 3 had been noticed to Fairchild, as I recall, City  
 4 of Industry, for example. Then we kind of  
 5 wondered if these were actually liability  
 6 notifications or notice of environmental  
 7 conditions.

8 So, I'm not quite sure if you're  
 9 asking was this a notice of liability or notice  
 10 of environmental condition.

11 Q. Let's do all three. All three  
 12 categories of notice.

13 A. Yes.

14 Q. The third category first, notice of  
 15 liability. I am just referring now to the  
 16 asterisk items. The other items are subject of  
 17 the some of the letters and environmental  
 18 issues. Just the asterisk items which are all,  
 19 as you understand it, compliance issues, one or  
 20 two I think might be related to investigation.  
 21 I am putting that aside. They are compliance  
 22 issues by and large; right?

23 A. The ones with asterisks?

24 Q. Yes.

25 A. Well, there are the entries that

## 1 JOHN LEASE - CROSS

2 did not have the 8 digit project number.

3 Q. That is a better way to do it.

4 A. The asterisk items that follow the  
 5 general convention of, you know, 5 digit number  
 6 followed by 3 digit number would be compliance  
 7 issues with the exception of a few. There is  
 8 some stuff in here that got carried into the  
 9 project, projects that later became  
 10 predominantly compliance issues that were  
 11 related more to remediation.

12 Q. For Judge Stapleton's sake maybe we  
 13 can clarify what we mean by project numbers.  
 14 You will see on these charts there are two  
 15 formats of project numbers. For example, the  
 16 first whatever however many, I guess 18 or so  
 17 are listed with a 5 digit newspaper, a dash and  
 18 3 digit number. That continues through the  
 19 chart. Then there is a separate type of project  
 20 number below that.

21 Mr. Lease, you tell me, the second  
 22 type of project number, the one that doesn't  
 23 have 5 digits and the dash and 3, those are  
 24 contamination related projects?

25 A. Yes. The P numbers.

Page 1143

Page 1145

## JOHN LEASE - CROSS

Q. The P numbers.

A. Right.

Q. So those are contamination projects which we talked about earlier just putting aside for now, still talking about compliance. I am focused on the compliance items. The asterisk items here in the three buckets of notice you were clearly telling Fairchild here notice as you called it of liability for those items. You are saying here is the bill here is how much we spent?

A. This is how much we spent for these projects, correct.

Q. Is it your testimony you are also telling them about the other two buckets of notice in this letter for those projects?

A. No. It is not my understanding. This table was put together in anticipation of the mediation session I look back at this now, for example the first asterisk entry is confined space compliance 009. I think what we are saying here we are noticing that 23,495 was spent on that project. That is a specific project as opposed to a condition.

Page 1144

Page 1146

## JOHN LEASE - CROSS

THE ARBITRATOR: Which one are you looking at, first item on the top, City of Industry?

THE WITNESS: City of Industry. The project number is 36010009.

Q. Perhaps it is easier, I know we had that letter on City of Industry you went over with Mr. Chesler. Let's look at another facility just because it doesn't have perhaps that complication. We will come back to City of Industry.

Let's do Simi Valley a second which is not subject of any letters; right? That is on page 5 of 6 in the chart?

A. The gap analysis letter?

Q. No. The chart in tab 36 of the project and their project numbers. Amounts spent?

A. I am on Simi Valley.

Q. You see. 5001097 there is a couple of items there. Not that many. We can probably deal with this pretty quickly.

THE ARBITRATOR: When you use the phrase compliance, are there areas of

JOHN LEASE - CROSS environmental compliance; there are, right?

MR. ZUROFSKY: Yes.

THE ARBITRATOR: Some of them are environmental, some of them are work safety?

MR. ZUROFSKY: Yes, your Honor.

THE ARBITRATOR: But compliance as opposed to contamination?

MR. ZUROFSKY: Correct. That is the divide we are drawing right now. Within compliance there are different items that might fall into different categories.

Q. But Simi Valley pretty manageable number of claims here. So the asterisks, there is three asterisks items there in Simi Valley. Do you see that?

A. Yes.

Q. What does the asterisk mean in this chart for Simi Valley?

A. What the asterisk means is that that project, let's look at confined space compliance which is 002, that specific project was being noticed for liability to Fairchild.

Q. Is it your testimony that project had previously been provided, Fairchild had

## JOHN LEASE - CROSS

previously been provided notice with respect to that project in either of the first two categories of notice we discussed?

A. Yes. Confined space compliance was a common finding across multiple Fairchild facilities in terms of noncompliance. So now we have a specific project at Simi Valley that is addressing that compliance issue.

Q. It is your testimony the source of that notice on the first two buckets was one, either the letters we looked at this morning; right?

A. Yes.

Q. Or the Phase Is; right?

A. That is my general recollection.

Right.

Q. Anything else you can think of that might have provided the notice other than the letters we talked about this morning and Phase Is for Simi Valley?

A. For Simi Valley, I don't recall there was anything else.

Q. Now I want to look at the Phase I for Simi Valley. My hope in this exercise we

1 JOHN LEASE - CROSS  
 2 don't go through all the Phase Is. Let's see if  
 3 we can do it with Simi Valley 424.  
 4 MR. CHESLER: Your Honor, may I  
 5 just through the court make a comment which may  
 6 be of value to Mr. Zurofsky, maybe save us time  
 7 or maybe not.

8 The witness testified before he  
 9 can't from the witness stand pick out what was  
 10 in that 10 percent that wasn't, the 10 percent  
 11 of the items that were not included in the  
 12 summary chart for which this -- behind tab 40  
 13 for which tab 41 is backup.

14 I can represent to the court this  
 15 particular one which Mr. Zurofsky is on right  
 16 now, which is confined space compliance at Simi  
 17 Valley is in fact one of the items in that 10  
 18 percent. So if the point of this  
 19 cross-examination is to say I can't find a  
 20 reference in the Phase I report for Simi Valley  
 21 to confined space, I will stipulate it is not  
 22 there.

23 Our point is different, as I assume  
 24 the court understands. That is why it is in the  
 25 10 percent. We can try to do that for others if

1 JOHN LEASE - CROSS  
 2 MR. ZUROFSKY: I appreciate that.  
 3 There is a lot of these that go on. I am happy  
 4 not to do Simi Valley.  
 5 THE ARBITRATOR: Simi Valley, you  
 6 are referring to chart 41?

7 MR. CHESLER: Yes.

8 MR. ZUROFSKY: Yes.

9 THE ARBITRATOR: It does appear in  
 10 here somewhere.

11 MR. ZUROFSKY: That is a different  
 12 item that is not asterisked item, 625. My  
 13 point, just to be clear, it is our position that  
 14 none of the asterisk items notice for the first  
 15 two buckets are provided in the Phase Is at all  
 16 for any of the asterisk items. Maybe one or two  
 17 that is slipping my mind. They are not in the  
 18 Phase Is.

19 I am trying to avoid having to take  
 20 the court's time where we go through all the  
 21 Phase Is, and witness' time as well. The  
 22 witness said --

23 THE ARBITRATOR: Why don't you  
 24 look at this at lunch time or something, maybe  
 25 you can agree on, you already said on Simi

1 JOHN LEASE - CROSS  
 2 you like.  
 3 Since the witness says he doesn't  
 4 know, taking an hour to make that point seems to  
 5 me not to be a proper use of time.

6 MR. ZUROFSKY: I am fully in  
 7 agreement. If you can identify what items that  
 8 are those in the Phase Is that comprise those 10  
 9 percent. I am happy not to go over those.

10 MR. CHESLER: We will pull that  
 11 together and provide it. I know that is one of  
 12 them.

13 MR. ZUROFSKY: How about the other  
 14 two for Simi Valley, other two asterisked items  
 15 fall protection and electrical compliance?

16 MR. CHESLER: They are not. One  
 17 of the ways you can tell, your Honor, if you  
 18 look at tab 41, which is the backup to tab 40  
 19 you will see those entries are not there in the  
 20 backup for Simi Valley. That is therefore,  
 21 since that is the backup with each of the  
 22 numbers that adds up to the 14 million and  
 23 change that represents the 90 percent, it is  
 24 kind of self-evident on its face. I am trying  
 25 to save us time.

1 JOHN LEASE - CROSS  
 2 Valley.

3 MR. CHESLER: Yes. As I say, we  
 4 will give counsel a list of which particular  
 5 items were in the 10 percent as we said and the  
 6 witness testified, the 10 percent was intended  
 7 to represent specific items for which we don't  
 8 believe there was any notice that addressed that  
 9 item as opposed to the issue.

10 THE ARBITRATOR: Prior notice for  
 11 that project and that item.

12 MR. CHESLER: We may disagree on  
 13 what the requirements under the contract are,  
 14 that is a different question.

15 MR. ZUROFSKY: I am happy to look  
 16 at the list. If there is any left over after  
 17 that I will reserve my rights to ask the witness  
 18 about it if that is fine.

19 MR. CHESLER: Fine.

20 Q. We can move off the asterisks for  
 21 now. One before we do, in St. Cosme, Mr. Lease,  
 22 there is a couple projects one titled pedestrian  
 23 and forklift traffic organization; do you know  
 24 which one I am talking about?

25 A. Which table are you looking at?

Page 1151

1           JOHN LEASE - CROSS  
 2   Q. Sorry, tab 36, page 2 of 6.  
 3   A. Do you have the number.  
 4   Q. Bates number 50 -- tab 36, Bates  
 5 5000195. I am looking at project 36230-036?  
 6   A. Okay.  
 7   Q. What was going on with the forklift  
 8 traffic organization what is that project about?  
 9   A. That is a, I believe it relates to  
 10 mobile equipment. I don't know the details.  
 11   Q. Forklifts moving around the plant?  
 12   A. Forklifts moving around. They need  
 13 to provide for separation of pedestrians and  
 14 forklift traffic for safety so the forklifts  
 15 don't run people over.  
 16   Q. Is Alcoa still claiming that as  
 17 indemnifiable expense under the agreement?  
 18   A. Yes.  
 19   Q. The next one, smoking area?  
 20   A. Smoking area?  
 21   Q. Yes. Next project down.  
 22   A. Right. I don't have specific  
 23 knowledge of that particular project.  
 24   Q. Was it building a fenced off area  
 25 so people can smoke?

Page 1153

1           JOHN LEASE - CROSS  
 2   A. The blue ones?  
 3   Q. Yes.  
 4   A. Yes.  
 5   Q. Plus the documents above it.  
 6   A. Phase IIs. To the extent the Phase  
 7 Is discuss environmental contamination.  
 8   Q. I believe you testified on  
 9 direct-examination that the Phase II scopes of  
 10 work were provided to Mr. Hodge and that the  
 11 Phase IIs were later provided to Fairchild;  
 12 right?  
 13   A. Phase IIs, what was the last part  
 14 of your statement?  
 15   Q. The Phase IIs themselves were  
 16 later, the reports themselves were later  
 17 provided to Fairchild?  
 18   A. Yes.  
 19   Q. The Phase IIs, I think I heard your  
 20 testimony is the basis on which you consider to  
 21 be the notice to Fairchild of the condition and  
 22 of the proposed response going forward with  
 23 respect to contamination investigations; is that  
 24 right?  
 25   A. Yes.

Page 1152

1           JOHN LEASE - CROSS  
 2   A. I don't know.  
 3   Q. Is Alcoa still claiming that for  
 4 indemnification under the agreement?  
 5   A. We are claiming it, yes.  
 6   Q. Go down 36230-052?  
 7   A. Okay.  
 8   Q. Traffic compliance.  
 9   A. Yes.  
 10   Q. What is that?  
 11   A. Again, industrial environment  
 12 traffic usually refers to mobile equipment.  
 13 That is really the extent of my knowledge on  
 14 this particular project.  
 15   Q. You can put that to the side,  
 16 obviously pending the list of items that comes  
 17 from your counsel.  
 18   Let's switch gears talk about  
 19 subsequent investigations on the contamination  
 20 side. Okay.  
 21   A. Okay.  
 22   Q. That is everything in the binders  
 23 past Volume 1; right?  
 24   A. Volume C?  
 25   Q. Volume C. Binder C.

Page 1154

1           JOHN LEASE - CROSS  
 2   Q. Both buckets one and two?  
 3   A. Yes.  
 4   Q. So, it is your testimony that not  
 5 only does the Phase IIs say here are the  
 6 conditions at the facility, also they say here  
 7 is what we are going to do about them?  
 8   A. Yes.  
 9   Q. Let's look at what you said when  
 10 you sent the Phase IIs to Fairchild. That is  
 11 in, I believe it is in your, is it a tab in your  
 12 binder? I think you had it.  
 13   MR. CHESLER: I am told the Phase  
 14 IIs actually came from ERM. They weren't  
 15 transmitted from Alcoa.  
 16   Q. In the correspondence binder I put  
 17 in front of you, Mr. Lease.  
 18   A. Okay.  
 19   Q. Under multiple facilities the last  
 20 tab again we were looking at earlier. I am  
 21 looking now at three letters in -- two letters  
 22 in, the second letter, November 3, 2003 letter.  
 23   A. Okay.  
 24   Q. To Mike Hodge, do you see it, sir?  
 25   A. Yes.

31 (Pages 1151 to 1154)

Page 1155

1           JOHN LEASE - CROSS  
 2   Q. Bates stamped FAIR 50000967; right?  
 3   A. Yes.  
 4   Q. This is the letter you sent to Mike  
 5 Hodge which was providing notice of liability  
 6 for the Phase IIs; right?  
 7   A. Yes.  
 8   Q. Any request in this letter you sent  
 9 to Mr. Hodge that says let's discuss what the  
 10 findings are or what we are going to do next?  
 11   A. There was no requirement that I --  
 12 I said please contact me with any questions  
 13 regarding this information or my email.  
 14   Q. That is what it is, that's what  
 15 you're saying?  
 16   A. That is what is said here.  
 17   Q. So you got a response from  
 18 Fairchild; right to that letter?  
 19   A. Yes, I did.  
 20   THE ARBITRATOR: Let me just read  
 21 this letter, please. Thank you.  
 22   Q. Mr. Lease, before moving on, Phase  
 23 IIs did not contain recommendations from ERM;  
 24 did they?  
 25   A. I think they did.

Page 1157

1           JOHN LEASE - CROSS  
 2   Q. Yes.  
 3   A. It was in the Phase II report. I  
 4 don't understand what your question is.  
 5   Q. Mr. Flanzenbaum testified on  
 6 Tuesday there were separate recommendations made  
 7 by ERM to Alcoa about what to do following the  
 8 Phase IIs. They were not in the Phase II  
 9 reports themselves. Do you recall that  
 10 testimony?  
 11   MR. CHESLER: Your Honor, I object  
 12 to the characterization of the testimony. The  
 13 man was on the stand for hours, he said several  
 14 different things. I am not going to say what  
 15 they are because he is in the middle of  
 16 cross-examination. I object to the  
 17 mischaracterization of testimony.  
 18   Q. Do you recall it?  
 19   THE ARBITRATOR: Why don't you  
 20 just ask this witness what his understanding is.  
 21 The other gentlemen's testimony will stand as it  
 22 is. There was a little ambiguity in what he  
 23 said, although my understanding there weren't  
 24 clear firm recommendations on everything, there  
 25 were things that might have been interpreted as

Page 1156

1           JOHN LEASE - CROSS  
 2   Q. Were you here on Tuesday for  
 3 Mr. Flanzenbaum's testimony?  
 4   A. I don't recall when I was in here.  
 5 I was in and out.  
 6   Q. I will refer on page 59, I don't  
 7 have a copy of the transcript, I haven't  
 8 actually been provided with it yet, I haven't,  
 9 page 59, 59 lines 4 through 7 Mr. Flanzenbaum  
 10 was asked did these reports contain specific  
 11 recommendations what to do next?  
 12   "Answer: Specifically no, we  
 13 basically finalized these reports with our  
 14 conclusions." Do you agree with that testimony?  
 15   A. I don't particularly agree with  
 16 that statement. I think there was enough detail  
 17 in these reports, as I understand them, to say  
 18 this is where we go next.  
 19   Q. You don't recall ERM communicated  
 20 recommendations separately from its Phase IIs?  
 21   A. They were in the Phase IIs.  
 22   Q. No separate recommendations  
 23 provided to Alcoa with respect to ERM's  
 24 recommendations arising out of the Phase IIs?  
 25   A. Recommendations from ERM?

Page 1158

1           JOHN LEASE - CROSS  
 2 suggested. He made some subsequent  
 3 recommendations. Whatever it is, it is. This  
 4 gentlemen can testify what he knows.  
 5   Q. You received the response when you  
 6 sent that letter to Fairchild about the Phase II  
 7 costs you received actually more than one  
 8 response from Fairchild; right?  
 9   A. Yes. There were two responses, I  
 10 think.  
 11   Q. I want to focus on the second  
 12 response which is the one I think in your binder  
 13 from Mr. Chesler at tab, I believe in tab 18.  
 14   A. Looking at Mr. Beckford's letter?  
 15   Q. Mr. Chesler's -- yes,  
 16 Mr. Beckford's letter, exactly.  
 17   A. We are out of your binder now.  
 18   Q. Yes. It is also in mind. As I  
 19 promised, whenever we can go back to  
 20 Mr. Chesler's, we will.  
 21   A. Okay. I'm there.  
 22   Q. I want to focus on a couple of  
 23 things. First off, Mr. Beckford attaches a  
 24 chart here that breaks down Fairchild's  
 25 interpretations of the Phase IIs that were

32 (Pages 1155 to 1158)

Page 1159

## 1 JOHN LEASE - CROSS

2 provided; correct?

3 A. Yes.

4 Q. It comments on those findings of  
5 the Phase IIs; right?

6 A. Very generally, but it did comment.

7 Q. Comment. The chart does, so does

8 Mr. Beckford; right?

9 A. Yes, he commented on the cost.

10 Q. The chart does more than that;  
11 doesn't it, sir?

12 A. Okay.

13 Q. Does it? Is that your recollection  
14 of the chart, it talks substantively about the  
15 issues at some of the facilities?16 A. Three categories he commented on  
17 related to contamination.18 Q. With respect to some of the items,  
19 the chart says, I will refer you to page, I have  
20 a different Bates number, Bates page FC 299,  
21 this is category 3 it is talking about?

22 A. Yes.

23 Q. Under there he has a symbol system.  
24 I believe this chart actually was prepared by  
25 Mr. Hodge. I will just use Mr. Beckford for

Page 1160

## 1 JOHN LEASE - CROSS

2 convenience. There is a symbol system you see  
3 there Y, N, NN?

4 A. Yes, I do.

5 Q. I want to look at Y. Under Y the  
6 chart says "Costs of this portion of the report  
7 may be appropriate for indemnification depending  
8 on what if any remedial action is  
9 recommended/required." Do you see that?

10 A. Yes.

11 Q. Is Fairchild in this letter  
12 communicating to you it had analyzed the Phase  
13 IIs and with respect to at least some of them it  
14 thought maybe there might be future work needed  
15 to be done; is that right?16 A. I really don't know what his  
17 comments here was. We are getting into an area  
18 now where I think the experts on the Phase II  
19 investigations and remedial investigation  
20 follow-ups are really the experts that need to  
21 discuss what actions follow the recommendations  
22 in the Phase II.23 Q. Who did you send the chart to when  
24 you got it, if any, which experts did you send  
25 the chart to?

Page 1161

## 1 JOHN LEASE - CROSS

2 A. I believe I sent it to John George  
3 and perhaps others in the remediation group.4 THE ARBITRATOR: What charts are  
5 you referring to?6 MR. ZUROFSKY: I am talking to the  
7 chart attached to Mr. Beckford's letter.8 THE ARBITRATOR: Mr. Beckford's  
9 chart?10 MR. ZUROFSKY: Yes. Sorry. There  
11 is a chart in the main letter which deals with  
12 the costs. Then there is a chart attached which  
13 provides comments analyzing the Phase II  
14 results.

15 THE ARBITRATOR: Right.

16 MR. ZUROFSKY: I was focused  
17 specifically on the third category of comments  
18 which begins on page FC 299 in which for some  
19 portion of the Phase II those designated by the  
20 symbol Y, Fairchild is saying cost of this  
21 portion of the report may be appropriate for  
22 indemnification, depending on what if any  
23 remedial action is recommended/required.24 Q. I am asking you, do you understand  
25 that to be Fairchild's commenting on the Phase

Page 1162

## 1 JOHN LEASE - CROSS

2 II results?

3 A. It's a comment.

4 Q. Do you see it says there may, I can  
5 show you an example if you like, but there are  
6 some examples as we go through that chart in  
7 which the comments is there may be a need for  
8 future investigation or remediation. Do you  
9 recall that there is comments to that effect?10 A. I haven't looked at this chart in  
11 two or three years. Do you want to point out  
12 specific areas? I will be glad to look at them.13 Q. I am happy to do that, although you  
14 did go through it with Mr. Chesler yesterday.15 MR. CHESLER: Again, your Honor --  
16 MR. ZUROFSKY: The document I am  
17 saying. He said the document.18 MR. CHESLER: You just said the  
19 chart.20 Q. Go to the same page we're on,  
21 right. The first entry.

22 A. Which page are we on now.

23 Q. The one we were just on FC 299.  
24 First entry 9 A, the bottom, do you see the  
25 bottom of the comments section?

33 (Pages 1159 to 1162)

1           JOHN LEASE - CROSS  
 2       A. Yes.  
 3       Q. "The source of this impact is not  
 4 entirely clear from Alcoa's assessment." Do you  
 5 see where I'm reading?  
 6       A. Yes.  
 7       Q. "However it presents an issue  
 8 which should be followed up" do you see that?  
 9       A. Yes, I see that.  
 10      Q. There is Fairchild saying that this  
 11 might be an issue to follow-up; right?  
 12      A. That's what they're saying.  
 13      Q. I want to return your attention to  
 14 the cover letter from Mr. Beckford, which is FC  
 15 296. That comment was with respect to the  
 16 Torrance facility. We can look back but it was  
 17 with respect to the Torrance facility.  
 18      Let's look at FC 296, end of  
 19 Mr. Beckford's cover letter with that chart.  
 20 Are you with me?  
 21      A. I follow you so far.  
 22      Q. The last paragraph before the  
 23 asterisks at the end there it says "On those  
 24 sites as to which we agree there should be  
 25 further investigation, as noted in attachment 1

Page 1164

1           JOHN LEASE - CROSS  
 2 under category 3, please ensure that the actual  
 3 investigative measures are first discussed with  
 4 our designated representative, Michael Hodge as  
 5 required by section 11.6 C of the Acquisition  
 6 Agreement." Do you see that, Mr. Lease?  
 7       A. Yes.  
 8       Q. So, is Mr. Beckford saying to you  
 9 here, that for those items where, those  
 10 facilities where there might be need for further  
 11 investigation, pursuant to 11.6 C which is  
 12 something we looked at yesterday, make sure you  
 13 talk to us before you go and do the  
 14 investigating; do you see that?  
 15      A. Yes.  
 16      Q. Is that what he is saying there, is  
 17 that what you understood him to mean?  
 18      A. He is asking that we discuss these  
 19 with Mike Hodge.  
 20      Q. Before doing it; right?  
 21      A. Before doing it, correct.  
 22      Q. One of the ways one would discuss  
 23 investigation would be to provide proposals and  
 24 scope of work before doing the work; right?  
 25      A. Could be one way.

34 (Pages 1163 to 1166)

Page 1166

1           JOHN LEASE - CROSS  
 2       A. I think we did provide scopes of  
 3 work to Fairchild.  
 4       Q. Let's look at some documents.  
 5 This has been I believe previously introduced.  
 6 I am not sure if we have additional copies up  
 7 there however. It is 134. Do you see  
 8 Exhibit 134 there, Mr. Lease?  
 9       A. Yes.  
 10      Q. Who is Eric Hendrix?  
 11      A. Eric is a consultant who works for  
 12 Mission Geoscience.  
 13      Q. Mission Geoscience is the firm of  
 14 environmental professionals Alcoa hired to do  
 15 the follow-up investigations to the Phase IIIs  
 16 for the Southern California sites; right?  
 17      A. I believe that's true, yes.  
 18      Q. Who is Larry McShae?  
 19      A. Larry is a member of the  
 20 remediation work group, works for Alcoa.  
 21      Q. Now, he was in charge, was he not,  
 22 of the follow-up investigations at the Southern  
 23 California facilities, Fasteners facilities?  
 24      A. At this time, I believe he was  
 25 overseeing the Southern California facilities.

Page 1167

Page 1169

## 1 JOHN LEASE - CROSS

2 Q. So, let's turn to the last, this is  
 3 the time period, just so we have it is October  
 4 2003; right?

5 A. Yes.

6 Q. That is after or right around the  
 7 time the Phase IIs are being communicated to,  
 8 right before, excuse me, communication of Phase  
 9 IIs go to Fairchild?

10 A. I recall it is about October,  
 11 November.

12 Q. I want to start with the last email  
 13 chronologically, sorry first email  
 14 chronologically, last one on the page 00050292.

15 A. Okay.

16 Q. This is from Mr. McShae to  
 17 Mr. Hendrix. He says "I met with John Lease and  
 18 Sandy Harvey today to cover a number of issues  
 19 related to the former Fasteners Fairchild sites  
 20 in Southern California, a couple things for you  
 21 to note: 1, I committed to John that we would  
 22 begin preparing a monthly report for him and the  
 23 others involved to track both progress at the  
 24 sites and expenditures. Format is open at this  
 25 point" so on and so forth.

## 1 JOHN LEASE - CROSS

2 time.

3 Q. Let's move forward in time, back  
 4 one page in the email to fair 50291. Bottom  
 5 email on that page.

6 A. Yes.

7 Q. "One item I forgot to mention last  
 8 night" this is from again Mr. McShae to  
 9 Mr. Hendrix.

10 THE ARBITRATOR: Where are you?

11 MR. ZUROFSKY: Sorry, your Honor,  
 12 page before which is the next email in time.  
 13 Page 50291. Mr. McShae writes again "One item I  
 14 forgot to mention last night, John Lease will  
 15 shortly be sending the ERM reports to Fairchild  
 16 and asked that if we see anything in there that  
 17 we are not in agreement with we let him know as  
 18 soon as possible. So if you have noticed  
 19 anything from what you have seen so far, let me  
 20 know."

21 Q. Do you see that, Mr. Lease?

22 A. I see that.

23 Q. These are the two, this is the  
 24 Mission Geoscience, the consultant that Alcoa is  
 25 hiring to do the follow-up investigations and

## Page 1168

Page 1170

## 1 JOHN LEASE - CROSS

## 2 JOHN LEASE - CROSS

3 "Number 2, I told John we would  
 4 prepare for him to send to Fairchild a document  
 5 that describes the overall plan to address each  
 6 of the issues identified to date at the sites.  
 7 This would basically be a refinement of the  
 8 bullet lists you have already started assembling  
 9 and sent along with the CEAT estimates." CEAT  
 10 estimates were Alcoa's estimates for future  
 11 costs, right?

11 A. I am not sure what the CEAT  
 12 estimates encompassed as far as costs.

13 Q. Generally speaking a CEAT estimate  
 14 however is estimate of future cost; is it not?

15 A. Cost for what I'm not sure.

16 Remediation. You have to go back to talk to  
 17 Mr. George about that.

18 Q. "This is also the vehicle by which  
 19 we can make them aware of our intention to  
 20 contact the RWQCB on Temple as a necessary step  
 21 moving forward" do you see that there?

22 A. I see that.

23 Q. Do you recall having that meeting  
 24 with Mr. McShae and Mr. Harvey?

25 A. Frankly I don't at this point in

1 Mr. McShae who is overseeing those  
 2 investigations talking about whether or not they  
 3 disagree with the, if there is anything in the  
 4 Phase II that they are not in agreement with;  
 5 right?

6 A. That's what this says.

7 Q. Mr. McShae says that you asked if  
 8 they have any such disagreement about that  
 9 stuff, that they provide it to you so that you  
 10 can, before sending the reports to Fairchild, is  
 11 that right, before ERM sending the reports to  
 12 Fairchild?

13 A. I am looking for where it says  
 14 that.

15 Q. It says "John Lease will shortly be  
 16 sending the ERM reports to Fairchild and asked"  
 17 this is Mr. McShae saying you asked, that if we  
 18 see anything in there that we are not in  
 19 agreement with we let him know as soon as  
 20 possible.

21 A. Okay.

22 Q. Does this indicate, do you recall  
 23 asking Mr. McShae for him and Mr. Hendrix,  
 24 people who are responsible for these further

Page 1171

1 JOHN LEASE - CROSS  
 2 investigations if there is anything they  
 3 disagreed with about the ERM reports they should  
 4 tell you about it before you send the reports to  
 5 Fairchild?

6 A. I believe so. Yes.

7 Q. Let's move up in the chain,  
 8 Mr. Hendrix replies, he says "Will do. How soon  
 9 before John intends to submit the ERM reports to  
 10 Fairchild?"

11 Then he goes on to say, "Regardless  
 12 of the findings or opinions expressed by ERM  
 13 within their documents, it seems to us that  
 14 Alcoa clearly has the right to agree or disagree  
 15 and proceed with whatever course of action you  
 16 believe is appropriate, given the data. This is  
 17 particularly true of the three sites, Torrance,  
 18 Fullerton and Unruh for which regulatory  
 19 involvement may be inappropriate or at a minimum  
 20 premature. The CEAT projections and bullet  
 21 lists which mission has prepared obviously  
 22 reflect this."

23 At this time had Mission prepared  
 24 CEAT projections and bullet lists that reflect  
 25 the fact they might disagree with ERM?

Page 1172

1 JOHN LEASE - CROSS

2 A. I was not aware they had been  
 3 prepared.

4 Q. Mission is clearly qualifies as  
 5 environmental professionals on your definition;  
 6 right?

7 A. I would say yes.

8 Q. They did the work for Alcoa; right?

9 A. Yes.

10 Q. Let's move forward again in time to  
 11 the next page, Mr. McShae responds. Again they  
 12 are talking about ERM Phase IIs; right, sir?

13 A. Yes.

14 Q. Mr. McShae respond "I think the  
 15 main issue here if a contractor we retained to  
 16 do the work came up with conclusions that we are  
 17 not in agreement with it would be prudent for us  
 18 to point this out now to Fairchild so that if we  
 19 move forward in a manner that is inconsistent  
 20 with what our Phase II contractor has  
 21 recommended there is some documentation that  
 22 Fairchild has been notified. Focus should be on  
 23 big picture issues and not the details."

24 Do you see that?

25 A. Yes.

Page 1173

1 JOHN LEASE - CROSS

2 Q. Is it your understanding that does  
 3 this reflect that Mr. McShae's -- strike that.  
 4 So, at this time, this is still  
 5 prior to sending the Phase IIs to Fairchild;  
 6 right?

7 MR. CHESLER: Your Honor, excuse  
 8 me. So long as we were talking about emails  
 9 that purported to refer to conversations with  
 10 Mr. Lease, I remained silent. But now we are  
 11 talking about conversations between or among  
 12 some consultants, there is no indication  
 13 Mr. Lease ever saw this, he is not copied on any  
 14 of this string. He is just reading him  
 15 documents and asking him to comment on it. That  
 16 is not cross-examination.

17 THE ARBITRATOR: Mr. McShae is an  
 18 Alcoa person.

19 MR. ZUROFSKY: Alcoa. Yes. Your  
 20 Honor, the point of this, it started if you  
 21 recall when Mr. Lease said he thought an  
 22 environmental professional would read the ERM  
 23 reports --

24 THE ARBITRATOR: I understand.  
 25 MR. ZUROFSKY: These are the

Page 1174

1 JOHN LEASE - CROSS

2 environmental professionals.

3 THE ARBITRATOR: Would you repeat  
 4 the last question.

5 Q. I will move on to the next topic.

6 THE ARBITRATOR: I think you can  
 7 ask him questions about whether he agrees or  
 8 disagrees, whatever conclusions he draws from  
 9 it.

10 MR. CHESLER: I wouldn't have  
 11 objected had that been the question. It wasn't.

12 Q. Let's move up in time again. Now  
 13 we get Mr. Hendrix's response to Mr. McShae  
 14 about ERM reports. "How soon does John intend  
 15 to send the ERM reports to Fairchild?" Do you  
 16 see that?

17 A. Yes.

18 Q. Then it says "In a general big  
 19 picture sense, all four sites require more  
 20 characterization than ERM suggests in their  
 21 Phase II reports. This is reflected within our  
 22 CEAT projections." Do you see that?

23 A. Yes.

24 Q. Does that refresh your recollection  
 25 Mission disagreed with the scope of the

36 (Pages 1171 to 1174)

Page 1175

Page 1177

## 1 JOHN LEASE - CROSS

2 suggestions, as he calls it in the ERM Phase  
3 IIs?4 A. I have no recollection about it  
5 because I didn't know this was going on. These  
6 are specific discussions between Mr. McShae and  
7 Mr. Goltz, all I am doing now is reading what he  
8 said.9 Q. Let's move forward to the first  
10 page. The email on the top third paragraph.  
11 This is from Mr. Hendrix again at Mission;  
12 right?

13 A. Yes.

14 Q. He says "Also, we should discuss  
15 how to best 'abbreviate' these CEAT spreadsheets  
16 prior to their submission to Fairchild.  
17 Obviously, some of these numbers will scare them  
18 a bit, if nothing else. But I would imagine we  
19 will not need to provide excruciating detail to  
20 them as to all of our assumption specifics,  
21 e.g., to avoid inciting a pissing contest over  
22 numbers of borings/wells at each clock cakes,  
23 depth of boring/wells, monitoring frequency,  
24 duration and type of remediation cost and  
25 frequency of new GAC vessels or other O & M

Page 1176

Page 1178

## 1 JOHN LEASE - CROSS

2 specs, etc. etc. I am sure you already have some  
3 ideas as to how to present this data to  
4 Fairchild responsibly without violating  
5 provisions of the your agreement."6 Do you recall any discussion, Mr.  
7 Lease, with Mr. McShae or Mr. Hendrix about the  
8 topic referenced in the paragraph I just read?

9 A. No.

10 THE ARBITRATOR: What was  
11 Mr. McShae's relationship with you, how did he  
12 fit into the hierarchy?13 THE WITNESS: Mr. McShae was an  
14 engineer in the remediation work group which  
15 is --16 THE ARBITRATOR: Would he report  
17 up to you?18 THE WITNESS: No. That is a  
19 completely separate group from the group I'm in.  
20 They focus strictly on remediation. Once the  
21 Phase IIs reports were completed and  
22 investigation moved forward the remediation work  
23 group took control of that process.24 THE ARBITRATOR: Your group is  
25 called the compliance group?

## 1 JOHN LEASE - CROSS

2 THE WITNESS: Yes.

3 Q. Mr. Lease, at the same time as  
4 Mission was scoping out this work they also, as  
5 you understand it preparing scope of work and  
6 proposals about further investigations they were  
7 going to be doing for Alcoa?8 A. I am not sure what the activities  
9 were with Mission at this time. They were our  
10 consultant for Southern California. But I  
11 wasn't involved in that project from a detail  
12 stand point. It was Larry was running the  
13 projects in California and Mr. George was  
14 running the projects in Europe. They were the  
15 ones that were having direct contact with the  
16 consultants on these matters.17 Q. Would you agree with me, Mr. Lease,  
18 if Mission was at this time preparing proposals  
19 and scope of work about future investigation  
20 that is something under the agreement you should  
21 have sent to Fairchild?22 A. The time I received them from  
23 remediation folks, yes.24 Q. Actually, let's rephrase the  
25 question. If Mission was preparing scopes of

## 1 JOHN LEASE - CROSS

2 work and proposals and documents like that for  
3 future work, is that something Alcoa under the  
4 agreement should provide to Fairchild as you  
5 understand it?

6 A. I would say yes.

7 Q. Do you know -- strike that.

8 We will go through it in more  
9 detail. Did you ever at any point ask  
10 Mr. Hendrix to prepare scopes of work and  
11 proposals for purposes of sending to Fairchild?

12 A. No.

13 Q. You don't recall doing that?

14 A. I don't think I met Mr. Hendrix  
15 until a few months ago.16 Q. Did Mr. McShae ever tell you that  
17 he was going to have Mission prepare scopes of  
18 work and proposals so you could send to  
19 Fairchild?20 A. I don't recall what Larry's  
21 conversations were or emails were regarding  
22 that.23 Q. You don't recall if you had that  
24 conversation with Mr. McShae or not?

25 A. No.

1           JOHN LEASE - CROSS

2       Q. Let's see the if we can help  
3 refresh your recollection. I am going to show  
4 you Mr. McShae's deposition.

5       THE ARBITRATOR: Does this witness  
6 know whether they were prepared, A, and B  
7 whether they were sent to Fairchild?

8       MR. ZUROFSKY: Mr. McShae -- that  
9 is fine, we can ask that testimony.

10      THE ARBITRATOR: You can shorten  
11 it up by asking the question if he knows.

12      Q. Do you know?

13      A. No -- wait. What was the question?

14      THE ARBITRATOR: Do you know  
15 whether these scopes of work were prepared by  
16 Mission Geoscience for the work we are talking  
17 about? They did scopes of work. Proposals.

18      THE WITNESS: Well, I think  
19 they've done scopes of work. I don't know what  
20 work we have been talking about though because  
21 there has been a lot of work done. We sent a  
22 lot of scopes of work to Fairchild as part of  
23 this project. So --

24      Q. We'll come back.

25      A. I am losing track of where we are

1           JOHN LEASE - CROSS

2 in the timeline.

3       Q. Are you aware of any communications  
4 from Alcoa to Fairchild other than  
5 communications sent by you and the Harvey letter  
6 we looked at in which Alcoa communicated to  
7 Fairchild information regarding claims under the  
8 indemnity?

9       A. Any other correspondence?

10      Q. Yes.

11      A. Not that I'm aware of.

12      Q. So you were the primary person  
13 responsible for that correspondence; right?

14      A. Yes.

15      Q. Likely would have gone through you?

16      A. Pardon?

17      Q. It likely would have gone through  
18 you if it went to Fairchild?

19      A. Likely, yes.

20      Q. Let's move forward. Let's look at  
21 the Torrance facility. I believe some of these  
22 documents may be in your binder with  
23 Mr. Chesler, perhaps not all of them. Let's  
24 look at Torrance.

25      The first document I want to look

1           JOHN LEASE - CROSS

2 at is January 25, 2005. I don't think it is in  
3 your binder. We will have to look in our binder  
4 for that.

5       A. What is the tab?

6       Q. January 25, 2005. Under Torrance  
7 which is labeled just Torrance. It says  
8 Torrance?

9       THE ARBITRATOR: Talking about in  
10 your book?

11      MR. ZUROFSKY: Yes, in our book,  
12 your Honor.

13      Q. Do you see that, Mr. Lease?

14      A. Okay. I'm there.

15      Q. Are you aware of any communication  
16 between Alcoa and Fairchild regarding the  
17 Torrance facility other than the letters we  
18 looked at this morning regarding compliance  
19 issues, we are now on contamination. With  
20 respect to contamination between the letters  
21 with Mr. Beckford regarding Phase II's and this  
22 letter of January 25, 2005?

23      A. The transmittal letter with the  
24 Phase II's?

25      Q. Right. Mr. Beckford wrote back to

1           JOHN LEASE - CROSS

2 you, remember we looked at that document?

3       A. Yes.

4       Q. With the chart. So between the  
5 time of that document when Mr. Beckford says  
6 please discuss further investigative measures  
7 with Michael Hodge until this document, January  
8 25, 2005, are you aware of any additional  
9 correspondence regarding contamination issues at  
10 the Torrance facility from Alcoa to Fairchild?

11      A. I am not aware of any, no.

12      Q. Let's look what this letter says.

13 This letter says, "Enclosed for your information  
14 are reports summarizing the result of recent  
15 soil and groundwater investigative activities  
16 undertaken by Alcoa at the former Fairchild  
17 facilities in Torrance and Fullerton." Do you  
18 see that, sir?

19      A. Yes.

20      Q. Were you transmitting to  
21 Mr. Beckford at that time reports of  
22 investigations that had already been done?

23      A. Yes.

24      Q. That is the first communication to  
25 Fairchild regarding contamination issues at

1 JOHN LEASE - CROSS  
 2 Torrance following his request that you discuss  
 3 investigations before doing them with  
 4 Mr. Michael Hodge to your recollection; right?  
 5 A. That's my recollection.  
 6 Q. It also covers Fullerton; right?  
 7 A. Pardon?  
 8 Q. This letter also addresses  
 9 Fullerton; right?  
 10 A. Yes.  
 11 Q. Turn two pages forward, there is a  
 12 chart; right? Do you see that there?  
 13 A. Yes.  
 14 Q. This chart lists up a bunch of  
 15 investigations done at the Southern California  
 16 facilities; correct?  
 17 A. Correct.  
 18 Q. It totaled to \$1 million,  
 19 1,073,208; right?  
 20 A. Yes.  
 21 Q. With respect to, I will still with  
 22 Torrance and Fullerton right now.  
 23 THE ARBITRATOR: Just a minute.  
 24 MR. ZUROFSKY: Sorry, your Honor.  
 25 THE ARBITRATOR: Where are you on

1 JOHN LEASE - CROSS  
 2 remedial consultant documents, do you see that,  
 3 site recon, meeting with client?  
 4 A. Yes.  
 5 Q. You never informed before this  
 6 document, did you-Fairchild that Alcoa had fired  
 7 EnviroSolve the incumbent consultants and hired  
 8 Mission Geoscience for the Southern California  
 9 facilities; did you?  
 10 A. I am not sure where EnviroSolve  
 11 were working at the time, if they were working  
 12 on all the California sites or City of Industry.  
 13 I know they were working at City of Industry on  
 14 the pump and treat system. I don't know if they  
 15 were actively employed by Fairchild at the time  
 16 at the other facilities or not.  
 17 Q. Let's break it down. At the time  
 18 of the acquisition EnviroSolve was consultants  
 19 doing at least some work at some of the Southern  
 20 California facilities when Alcoa took over;  
 21 correct?  
 22 A. Specifically COI from what I  
 23 recall. I don't know about the others.  
 24 Q. From that time Alcoa retained,  
 25 continued to retain EnviroSolve for a period of

1 JOHN LEASE - CROSS  
 2 the chart?  
 3 MR. ZUROFSKY: The chart attached  
 4 to Mr. Lease's January 25, 2005 letter. A chart  
 5 of costs headed table 1 remedial project costs.  
 6 Q. These are costs already been  
 7 incurred by Alcoa as of the time of this letter;  
 8 right, Mr. Lease?  
 9 A. Yes.  
 10 Q. Therefore contamination related  
 11 issues at these facilities; right?  
 12 A. That's true.  
 13 Q. If you look at, say, Torrance, the  
 14 items listed are vadose and groundwater  
 15 investigation, do you see that, Phase I and  
 16 Phase II?  
 17 A. Yes.  
 18 Q. Vadose being soil, right, sir?  
 19 A. I don't know.  
 20 Q. Next one, project coordination?  
 21 A. Yes.  
 22 Q. Next item is remediation transition  
 23 management?  
 24 A. Yes.  
 25 Q. If you look over review previous

1 JOHN LEASE - CROSS  
 2 time, right, we looked at invoices yesterday  
 3 with Mr. Chesler showed you?  
 4 A. I think those are for COI.  
 5 Q. The answer is yes?  
 6 A. Yes.  
 7 Q. At some point however, Alcoa  
 8 stopped using EnviroSolve; right?  
 9 A. That's correct.  
 10 Q. Started using Mission Geoscience;  
 11 right?  
 12 A. Yes.  
 13 Q. What I am asking you before Mission  
 14 had done any of those investigations, did Alcoa  
 15 inform Fairchild that they were switching from  
 16 EnviroSolve to Mission Geoscience for the work?  
 17 A. No, not that I'm aware of.  
 18 Q. We looked at email, Exhibit 134  
 19 that showed as early as October 2003, that is  
 20 before it is contemplating the Phase IIs  
 21 investigations are sent to Fairchild Mission was  
 22 already on board; right?  
 23 A. You have to talk to Larry about  
 24 that. I don't know what the arrangement was  
 25 with Mission.



Page 1191

Page 1193

## 1 JOHN LEASE - CROSS

2 Deposition Exhibit?

3 MR. ZUROFSKY: Yes, it is, your  
4 Honor, 293.5 Q. I want to turn your attention to  
6 page 79726.7 MR. CHESLER: What number did you  
8 give this exhibit?

9 MR. ZUROFSKY: It was already 293.

10 Q. Look on 79726.

11 A. Okay.

12 Q. Bottom there, there is an exchange,  
13 the middle one between Mr. McCauley who you say  
14 took over for Mr. McShae?

15 A. McCauley to Hendrix?

16 Q. Yes. You see that?

17 A. Yes.

18 Q. His question is "what happens if we  
19 don't sign and just proceed with voluntary  
20 clean-up?" Do you see that?

21 A. Yes.

22 Q. He is responding to an email from  
23 Mr. Hendrix below; right?

24 A. Yes, appears so.

25 Q. I want to focus on the, turn the

## 1 JOHN LEASE - CROSS

2 recovery from Fairchild for remedial tasks which  
3 are officially required by statute."4 THE ARBITRATOR: What does RP  
5 stands for.6 Q. Does it stand for responsible  
7 party, Mr. Lease?

8 A. I don't know.

9 Q. Do you see that language I just  
10 read?

11 A. Yes.

12 Q. Does that refresh your recollection  
13 there was debate between Alcoa, its consultants  
14 about whether or not discussion about whether or  
15 not to entered into this Consent Agreement?16 MR. CHESLER: Let me interpose an  
17 objection. This is an email string between and  
18 among people which do not involve Mr. Lease. He  
19 is not being impeached with it. He didn't  
20 profess to have a failure of recollection about  
21 this subject. He said he didn't know about it.  
22 There is a difference.23 THE ARBITRATOR: I guess he is  
24 asking does it refresh his recollection as to  
25 the subject matter. As to what was occurring he

Page 1192

Page 1194

## 1 JOHN LEASE - CROSS

2 page, the paragraph that spans the page, the one  
3 beginning on the bottom line; do you see that?

4 A. Bottom on 79726?

5 Q. Yes.

6 A. I'm there.

7 Q. The bottom line is that "Alcoa will  
8 not be able to get any regulatory agency in  
9 California to oversee a large site remediation  
10 such as Torrance without some form of Consent  
11 Agreement." This is Mr. Hendrix talking "If we  
12 decided to change direction with our oversight  
13 strategy not recommended and switch to the LA  
14 Water Board, for example Alcoa would still be  
15 asked to do the same sort of thing. No mystery  
16 to you CA provides CAL EPA with both a cost  
17 recovery mechanism for their oversight and  
18 shares the assessment and remedial process  
19 follows requirements of the state health and  
20 safety code closure and closure itself may be  
21 demonstrated to appropriately protective of  
22 human health and environment. Of course it also  
23 formally puts Alcoa on the legal hook as it was  
24 as RP for the clean-up but on the upside it  
25 provides Alcoa with an airtight basis for cost

## 1 JOHN LEASE - CROSS

2 was in charge of this thing. He either knew  
3 about it or he didn't.4 MR. CHESLER: That is my point.  
5 He said he didn't know about it then he shows  
6 him a document and says does it refresh his  
7 recollection. He didn't recall anything about  
8 it.

9 THE ARBITRATOR: I will allow it.

10 MR. ZUROFSKY: Where we are going  
11 which is telling Fairchild about these things.  
12 So let's move forward.13 Q. That email is November 9, 2005, we  
14 looked at the September letter from the  
15 Department of Toxic Substances. Now let's move  
16 on to tab 32 in Mr. Chesler's binder. Do you  
17 see that, Mr. Lease?

18 A. Tab 32.

19 Q. A letter from you to Ms. Hall dated  
20 February 22, 2006; right?

21 A. Yes.

22 Q. What you're saying here the caption  
23 report is enclosed for your review. You are  
24 sending Ms. Hall a report of investigation or  
25 assessment that had already been done at that

41 (Pages 1191 to 1194)

1 JOHN LEASE - CROSS  
 2 point; right report by DTSC?  
 3 A. Yes. This is report from the DTSC,  
 4 right.  
 5 Q. The report present findings from  
 6 California Department of Toxic Substances  
 7 Control DTSC site visit that was conducted  
 8 January 13, 2006 at the Torrance, California  
 9 facility to verify information contained in the  
 10 Phase I environmental assessments checklist  
 11 submitted on December 27, 1996 by Fairchild  
 12 Fasteners. Do you see that?  
 13 A. Yes.  
 14 Q. There is some discussion yesterday  
 15 about that Phase I checklist from 1996. Do you  
 16 know what a Phase I checklist is, sir?  
 17 A. No.  
 18 Q. You answered I think Judge  
 19 Stapleton's question beige saying you thought  
 20 the Consent Agreement covered the same subject  
 21 matter as Phase I checklist.  
 22 A. When did I say that.  
 23 Q. You said that yes. I am  
 24 confirming --  
 25 A. I don't remember saying that. I am

1 JOHN LEASE - CROSS  
 2 Q. Yes.  
 3 A. I am not aware of any that was sent  
 4 related to the Consent Agreement.  
 5 Q. Are you aware of any other  
 6 communications to Fairchild about draft Consent  
 7 Agreement we looked at two exhibits ago?  
 8 A. I don't recall any, no.  
 9 Q. That letter from DTSC we saw from  
 10 September 2005 is about five months earlier?  
 11 A. Which letter.  
 12 Q. The one two exhibits ago remember I  
 13 put in front of you Exhibit --  
 14 A. The one to Doug McCauley?  
 15 Q. Yes, sir.  
 16 A. September 19, yes, I see that now.  
 17 Q. About five months earlier; right?  
 18 A. Right.  
 19 Q. You don't say anything about that  
 20 or Consent Agreement to Ms. Hall in this letter,  
 21 February 22, 2006; right?  
 22 A. I don't appear to, no.  
 23 Q. Let's turn the page -- actually in  
 24 your tab I don't think, I think it is two tabs  
 25 forward in your book tab 34?

1 JOHN LEASE - CROSS  
 2 not sure that is the case.  
 3 Q. You don't know what this particular  
 4 Phase I checklist was about; right?  
 5 A. I am not even sure, did we talk  
 6 about this yesterday?  
 7 Q. I think you did. If you don't  
 8 know. I am asking you now do you know what it  
 9 is about?  
 10 A. I don't recall.  
 11 Q. Moving forward the rest of the  
 12 letter says "The DTSC representatives also  
 13 investigated additional solid waste management  
 14 units and areas of concern that would require  
 15 further investigation." Is there any mention in  
 16 this letter on February 22, 2006 about the  
 17 Consent Agreement that had been proposed by the  
 18 Department of Toxic Substances Control to Alcoa?  
 19 A. No. This was a transmittal letter  
 20 for this report.  
 21 Q. As of February 22, 2006 you didn't  
 22 say anything about the Consent Agreement to  
 23 Fairchild; had you?  
 24 A. As far as correspondence is  
 25 concerned?

1 JOHN LEASE - CROSS  
 2 A. Okay.  
 3 Q. Here is March 2, 2006 you writing  
 4 again to Ms. Hall; right?  
 5 A. Yes.  
 6 Q. Here you are attaching Consent  
 7 Agreement; right?  
 8 A. Yes.  
 9 Q. This is the first time that the  
 10 Consent Agreement was mentioned as you  
 11 understand it in any communications with  
 12 Fairchild; right?  
 13 A. I believe so, yes.  
 14 Q. What is the date it says is the  
 15 effective date of the Consent Agreement?  
 16 A. The date of the Consent Agreement?  
 17 Q. Yes. There is an effective date  
 18 listed in your first paragraph.  
 19 A. February 21, 2006.  
 20 Q. That is the day before the letter  
 21 we just looked at to Ms. Hall on February 22,  
 22 2006; right?  
 23 A. Yes, it is.  
 24 Q. Move forward -- one of the things  
 25 you say here second paragraph you say "This

Page 1199

Page 1201

1           JOHN LEASE - CROSS  
 2 Consent Agreement is result of the DTSC's  
 3 reported findings which we received on January  
 4 13, 2006, and which we forwarded to you on  
 5 February 22, 2006." Do you see that?  
 6       A. Yes.  
 7       Q. That is the letter we just looked  
 8 at before; right?  
 9       A. Yes, it is.

10      Q. But we looked earlier, did we not  
 11 at the drafts of the Consent Agreement that  
 12 dated all the way back to September 2005; right?  
 13     A. Yes.

14      Q. So clearly the Consent Agreement  
 15 was a topic of discussion before the January 13  
 16 report; right?

17      A. Apparently so.

18      MR. ZUROFSKY: I am about to  
 19 switch topics, your Honor. It is almost 12:25.  
 20 You want to do Powell after lunch. Should we do  
 21 lunch now? Maybe do lunch now we will resume  
 22 this afterward.

23      THE ARBITRATOR: How much longer  
 24 do you think you will be?

25      MR. ZUROFSKY: It depends again,

1           ROBERT L. POWELL - DIRECT  
 2       A. That's correct.  
 3       Q. By whom are you employed, Dr.  
 4 Powell?  
 5       A. Environ International Corporation.  
 6       Q. Who are they?  
 7       A. Environ is a private consulting  
 8 firm that does work in the public health  
 9 environmental science and engineering and health  
 10 and safety fields.

11      Q. What has Environ's involvement been  
 12 in this matter?

13      A. We were retained by the Cravath law  
 14 firm to provide expert opinions with regard to  
 15 the claims brought by Alcoa under the indemnity  
 16 agreement.

17      Q. I would like to hand out  
 18 Exhibit 137, your Honor. Can you please tell us  
 19 what Exhibit 137 is?

20      A. This is Environ's Expert Report in  
 21 this matter.

22      Q. Now, if you could turn to tab 34 in  
 23 this document, please. Do you that, sir?

24      A. Yes.

25      Q. A series of CVs, the first one, I

Page 1200

Page 1202

1           ROBERT L. POWELL - DIRECT  
 2 of course, what the items are that are in the 10  
 3 percent. If that matches up, that should be  
 4 fine, then I don't have that much more after  
 5 that.

6      THE ARBITRATOR: We will take our  
 7 lunch break.

9           (Luncheon Recess: 12:24 p.m.)

10      A F T E R N O O N   S E S S I O N  
 11                    1:15 p.m.

13      ROBERT L. POWELL,  
 14 having been first duly sworn by the Notary  
 15 Public (Tammye M. Pastor), was examined and  
 16 testified as follows:

17      MR. SLIFKIN: Pursuant to our  
 18 arrangement with respect to Mr. Lease, the next  
 19 witness will be Robert Powell.

20      DIRECT-EXAMINATION BY MR. SLIFKIN:

21      Q. Could you please state you full  
 22 name, sir.

23      A. Robert Leslie Powell.

24      Q. I believe it is Dr. Powell; is that  
 25 right?

1           ROBERT L. POWELL - DIRECT  
 2 believe is yours?

3       A. That's correct.

4       Q. Obviously this document is already  
 5 in the record. Perhaps you can briefly explain  
 6 for us the relevant education and experience  
 7 that you have relevant to the task at hand.

8       A. Okay. I am an engineer by  
 9 training, environmental engineer. I also have  
 10 graduate degrees in hydrology and in groundwater  
 11 hydrology.

12      I have been practicing for about 30  
 13 years as a consultant. The vast majority of  
 14 that has been dealing with projects involving  
 15 various types of pollution. In particular,  
 16 since receiving my Ph.D. in 1983 I have focused  
 17 almost exclusively on issues involving water  
 18 pollution and soil pollution at industrial  
 19 facilities. Much of that work was done over a  
 20 16 year period when I lived in California. And  
 21 I did extensive work on many of the largest  
 22 Superfund sites, hazardous waste management  
 23 sites and many industrial facilities in  
 24 California that involved issue of soil and  
 25 groundwater pollution.

43 (Pages 1199 to 1202)

Page 1307

1 JOHN LEASE - CROSS  
 2 contamination was in fact covered?  
 3 A. Yes.  
 4 MR. SLIFKIN: Thank you.  
 5 MR. ZUROFSKY: I have nothing  
 6 further.  
 7 THE ARBITRATOR: Thank you very  
 8 much, sir.  
 9 (Witness excused)  
 10 JOHN LEASE,  
 11 resumed, having been previously duly sworn, was  
 12 examined and testified further as follows:  
 13 CROSS-EXAMINATION CONTINUED BY MR. ZUROFSKY:  
 14 Q. Mr. Lease, before the break, before  
 15 lunch, we were discussing you recall  
 16 environmental contamination issues, notice, the  
 17 three types of notice and environmental  
 18 contamination issues, do you recall that?  
 19 A. Yes.  
 20 Q. We spent the morning talking about  
 21 compliance issues, there is this issue of the 10  
 22 percent with the chart now we are on to  
 23 contamination.  
 24 Do you recall we were also talking  
 25 about the Torrance facility and Consent

Page 1309

1 JOHN LEASE - CROSS  
 2 correspondence binder I gave you because we will  
 3 look at some subsequent.  
 4 A. Okay, I have that letter.  
 5 MR. CHESLER: Sorry, what is the  
 6 date?  
 7 MR. ZUROFSKY: March 2 was the  
 8 date of the letter we were looking at right  
 9 before lunch.  
 10 THE ARBITRATOR: March 2006.  
 11 Q. March 2 of 2006. We talked about  
 12 that Consent Agreement at length before lunch.  
 13 I want to move forward in time to April 12, 2006  
 14 letter for Torrance.  
 15 A. Okay.  
 16 Q. This is a notice letter from you to  
 17 Ms. Hall; is that right?  
 18 A. Yes.  
 19 Q. This is a notice letter in the  
 20 third category of notice; right?  
 21 A. The third category?  
 22 Q. Remember we had three categories of  
 23 notice, we talked about first one being notice  
 24 of a condition, second one being here is what we  
 25 are going to do about it. The third one being

Page 1308

1 JOHN LEASE - CROSS  
 2 here is the bill for work already done.  
 3 A. I am just reading the attachments  
 4 here to see what I said what the attachment was.  
 5 There is a payment to DTSC referenced here.  
 6 Q. Right. You are saying those  
 7 payments are in your view indemnifiable; right?  
 8 A. That's correct.  
 9 Q. Same thing with the next letter in  
 10 the binder; right? You're saying these are being  
 11 done, these payments are being done pursuant to  
 12 the Consent Agreement as well? Take the first  
 13 question first.  
 14 A. Which letter are we on now?  
 15 Q. Sorry, June 5, 2006.  
 16 A. Okay. The scope of work?  
 17 Q. Yes.  
 18 A. Okay.  
 19 Q. This was something sent, was it  
 20 not, to the Department of Toxic Substances  
 21 before it was sent to Fairchild? The scope of  
 22 work was prepared?  
 23 A. It looks like the scope of work  
 24 went to DTSC in May. My letter of June 5th.  
 25 Q. Right. You're saying that you're

70 (Pages 1307 to 1310)

Page 1311

1 JOHN LEASE - CROSS  
 2 claiming to Ms. Hall the costs of that, the  
 3 scope of work that you say was done pursuant to  
 4 the Consent Agreement are reimbursable in your  
 5 June 5 letter; right?

6 A. That's correct.

7 Q. Next is June 23rd. I realize this  
 8 one is unsigned in the book.

9 A. Yes.

10 Q. Do you recall sending a letter to  
 11 Ms. Hall around June, on or about June 23, 2006  
 12 in sum and substance reflected here, I believe  
 13 it is perhaps the signed one may be a version --  
 14 no, the one in Mr. Chesler's book is also  
 15 unsigned. So perhaps the signed one is not  
 16 about.

17 A. This is the transmittal letter.

18 Q. Again, is this something you are  
 19 claiming the costs of which are reimbursable  
 20 because of the -- as a result of the Consent  
 21 Agreement?

22 A. Yes. We make that notification.

23 Q. Next one as well, July 31, 2006.  
 24 Same issue?

25 A. Yes.

Page 1312

1 JOHN LEASE - CROSS

2 Q. Then there is only one more. Let  
 3 me just close this out. October 17, 2006, same  
 4 question.

5 A. Okay.

6 Q. Yes, agree? You're sending this  
 7 letter to Ms. Hall saying you owe us these costs  
 8 because we took them pursuant to the Consent  
 9 Agreement; is that correct?

10 A. That's correct.

11 Q. Let's switch to the Kelkheim  
 12 facility. I want to move to Europe for a  
 13 minute, exciting. Do you see the Kelkheim  
 14 letters?

15 A. No. Not yet.

16 Q. Under tab of Kelkheim.

17 MR. CHESLER: There is no Kelkheim  
 18 tab.

19 MR. ZUROFSKY: I have a Kelkheim.  
 20 It is the second to the last one in European  
 21 dated February 20, 2006.

22 MR. CHESLER: I have it now.

23 Q. FC 003882. What is going on here,  
 24 are you providing a report for work that had  
 25 board been done at the Kelkheim facility to

Page 1313

1 JOHN LEASE - CROSS  
 2 Ms. Hall?

3 A. Okay. I see that.  
 4 Q. Yes. Is that what's going on in  
 5 this letter you're providing Ms. Hall reports  
 6 for work that had already been done and  
 7 demanding payment for those, that work?

8 A. There is a proposal in here. I am  
 9 not sure exactly if that was work that had been  
 10 done at this point. It was still in progress.  
 11 And the second document is a letter.

12 Q. A letter to?

13 A. To appears to be an environmental  
 14 representative from Wiesbaden for De  
 15 Recordation.

16 Q. The regulator?

17 A. I am not sure if he is a regulator.

18 Q. Had Alcoa contacted the regulators  
 19 in Germany regarding the Kelkheim facility and  
 20 undertaken investigative work by the time of  
 21 this letter?

22 I'll ask it both ways. Had Alcoa  
 23 contacted regulators in Germany on this facility  
 24 prior to the date of this letter?

25 A. I don't know.

Page 1314

1 JOHN LEASE - CROSS

2 Q. Look at the second paragraph you  
 3 say "As a result of these studies the  
 4 authorities agreed in May 2005," does that  
 5 refresh your recollection that Alcoa had  
 6 discussions with these authorities on these  
 7 investigations?

8 A. Yes.

9 Q. It was as a result of these studies  
 10 so Alcoa performed studies at Kelkheim prior to  
 11 contacting or prior to having discussions with  
 12 the regulators?

13 A. It doesn't say that.

14 Q. I am asking if it refreshes your  
 15 recollection as to whether or not you performed  
 16 the studies before you spoke to the regulators?

17 A. I wasn't involved in the study, so  
 18 I am not sure what the sequence here. I can't  
 19 comment.

20 Q. We will move on. Let's talk about  
 21 Hildesheim. Did Alcoa performed work  
 22 investigative work at Hildesheim following the  
 23 Phase IIs?

24 A. I would need to refresh my memory.

25 Q. Let's look at tab 38 in Mr.

71 (Pages 1311 to 1314)

1           JOHN LEASE - CROSS  
 2 Chesler's binder. The very last page.  
 3       A. Hildesheim.  
 4       Q. Yes.  
 5       A. I see one project listed.  
 6       Q. Which one? 210, is that the one?  
 7       A. I see confirmatory groundwater  
 8 sampling.  
 9       Q. Right. That one; right? Does that  
 10 refresh your recollection that Alcoa performed,  
 11 it says confirmatory groundwater investigation,  
 12 Alcoa performed investigations at Hildesheim?  
 13      A. That would refresh my recollection  
 14 they did a project there.  
 15      Q. Do you recall at any point ever  
 16 telling Fairchild about that prior to this  
 17 arbitration? I should say prior to the provision  
 18 of these types of charts, the first one dates  
 19 actually prior to this arbitration.  
 20      A. Prior notice for this?  
 21      Q. Yes.  
 22      A. Would have been in the Phase II  
 23 report.  
 24      Q. That is all you recall about that?  
 25      A. I haven't looked back at the

1           JOHN LEASE - CROSS  
 2 correspondence file to see if there is a letter  
 3 for this.  
 4       Q. Are you aware of any correspondence  
 5 or communications? The documents are there, but  
 6 are you aware outside of --  
 7      A. I would have to check the records.  
 8       Q. Mr. Lease, in preparing documents,  
 9 in connection with ERM's Phase IIs did Alcoa  
 10 participate in the editing, did it provide  
 11 comments and edit those documents before they  
 12 were sent to Fairchild?  
 13      A. I believe there were technical  
 14 reviews conducted.  
 15      Q. Were you involved in that?  
 16      A. To some degree. Not so much on the  
 17 technical aspect. Just on readability. Form.  
 18      THE ARBITRATOR: Which reports are  
 19 these that you're referring?  
 20      MR. ZUROFSKY: The Phase IIs  
 21 before they were sent to Fairchild.  
 22      Q. Here is document 170 previously  
 23 introduced at depositions, I believe. The top  
 24 email is from you; right, Mr. Lease?  
 25      A. Yes, it is.

1           JOHN LEASE - CROSS  
 2       Q. The subject line is French law for  
 3 reporting and remediation. Do you see that  
 4 there?  
 5       A. Yes.  
 6       Q. We have had some discussion over  
 7 the first few days of this hearing, have we not,  
 8 about that section in ERM's report that deals  
 9 with French reporting requirements, do you know  
 10 which one I'm talking about?  
 11      A. French reporting?  
 12      Q. Yes. In the Phase IIs there is a  
 13 discussion of French reporting; right?  
 14      A. I believe there is, yes.  
 15      Q. You have heard testimony about that  
 16 at this hearing a couple different times?  
 17      A. Yes.  
 18      Q. Is that the section, as you  
 19 understand it, in July of 2003 that is being  
 20 addressed in this email?  
 21      A. Yes.  
 22      Q. So, I'd like to with that  
 23 background, look at the top email in the email  
 24 from you. If you look down four paragraphs,  
 25 beginning "At any rate." Do you see that there?

1           JOHN LEASE - CROSS  
 2       A. In parentheses?  
 3       Q. No. Sorry the one before. "At any  
 4 rate."  
 5       A. Okay.  
 6       Q. I want to go down -- you say "At  
 7 any rate, we still need French legal review of  
 8 these sections before we go to final with the  
 9 reports." DO you see that?  
 10      A. Yes.  
 11      Q. The distribution group on this  
 12 email is only internal Alcoa people; right, this  
 13 is not many could meant back to ERM?  
 14      A. I don't see anybody from ERM on  
 15 this list.  
 16      Q. If you look down seven lines in  
 17 that paragraph beginning "As we go."  
 18      A. Yes.  
 19      Q. "As we go through this exercise,  
 20 let's keep in mind that reimbursement from the  
 21 escrow fund remedial work under the sales  
 22 agreement is tied to regulatory drivers and/or  
 23 risk assessment." Do you see that?  
 24      A. Yes.  
 25      Q. When you were making comments on

Page 1319

Page 1321

1 JOHN LEASE - CROSS  
 2 ERM -- when Alcoa was making comments on ERM's  
 3 Phase II reports was one of the things they had  
 4 in mind comments that would most likely satisfy  
 5 the requirements of the agreement for  
 6 indemnification?

7 A. My comments here were really to  
 8 ensure we were clear from a legal standpoint as  
 9 to how the French law was read. And in fact  
 10 said.

11 It wasn't intended to dictate how  
 12 the technical portion of the report should be  
 13 phrased to meet any condition that we felt at  
 14 the escrow fund. My intent to try to get clear  
 15 language in the Phase IIs with French review, or  
 16 counsel review to make sure we understood what  
 17 the guidelines were in France.

18 Q. Just so we're clear, this is prior  
 19 to the time when you submitted those reports to  
 20 Fairchild, the Phase II reports?

21 A. Yes. This would have been before  
 22 then.

23 Q. You are now taking the position  
 24 that those Phase II reports provided financial  
 25 with notice of the subsequent investigations

1 JOHN LEASE - CROSS  
 2 Q. This section does not say or  
 3 anywhere in the Phase II, do you know if it says  
 4 that Alcoa will in fact be reporting to the  
 5 regulatory authorities the findings of the Phase  
 6 II?

7 A. Pardon?

8 Q. Are you aware of any part of the  
 9 Phase II report in which Alcoa or ERM says that  
 10 Alcoa will in fact be reporting the findings of  
 11 that investigation to the regulators?

12 A. In any Phase II report or this  
 13 Phase II?

14 Q. Any.

15 A. I really haven't read these in any  
 16 detail. Pretty much from the point that the  
 17 contract ended with ERM, as far as the Phase II  
 18 studies were concerned, I didn't get involved in  
 19 the technical aspects of the reports.

20 Q. All I am asking, sir, are you aware  
 21 in any of the Phase IIs whether or not it  
 22 contains a statement that says something to the  
 23 effect of Alcoa will be reporting, not that it  
 24 is good practice, but it will be reporting the  
 25 results to regulators?

Page 1320

Page 1322

1 JOHN LEASE - CROSS  
 2 that Alcoa was going to take?

3 A. Yes.

4 Q. Let's look at the French  
 5 facilities. I believe Mr. Chesler's binder  
 6 contains some documents related to the  
 7 Montbrison facility. It is on tab 26. I think  
 8 the first one.

9 A. Which tab?

10 Q. Let's do the Phase II. Tab 25,  
 11 page 25.

12 A. Okay.

13 Q. You have seen this reporting  
 14 section of this document before; right?

15 A. The Phase II report?

16 Q. Yes.

17 A. Yes, we reviewed it in part  
 18 yesterday.

19 Q. It talks about it being generally  
 20 understood as good management practice to  
 21 communicate relevant information to the  
 22 regulatory authorities, do you recall that?

23 A. In this report?

24 Q. Yes.

25 A. I don't recall specifics in here.

1 JOHN LEASE - CROSS

2 A. I don't know.

3 Q. Turn to tab 26, please. February  
 4 25, 2005 letter to Ernesto Beckford. Right?

5 A. Yes.

6 Q. At this point in time of this  
 7 letter had Alcoa contacted the French DRIRE and  
 8 provided results of investigations to the DRIRE?

9 A. Yes. There appears to be a letter  
 10 from Alcoa to the DRIRE. It is referenced in  
 11 the letter.

12 Q. Let's turn to 27.

13 A. Okay. I'm there.

14 Q. Is this again here you're

15 reflecting some attachments. If you look at the  
 16 first two the first one says a note from the  
 17 DRIRE inspector. Do you see that?

18 A. Yes.

19 Q. Then the second one says a response  
 20 to the DRIRE inspector dated May 22?

21 A. Response to the DRIRE inspector,  
 22 yes.

23 Q. Had Alcoa provided the note from  
 24 the DRIRE inspector to Fairchild before it  
 25 responded to the DRIRE inspector, do you know?

73 (Pages 1319 to 1322)

Page 1323

1           JOHN LEASE - CROSS  
 2       A. We provided Fairchild with the  
 3 letter to the authorities which would have been  
 4 the DRIRE. This letter I provided the note from  
 5 the inspector back to Alcoa and our response to  
 6 his letter. Response to his comments.

7       Q. So, in fact Alcoa had responded to  
 8 the DRIRE's comments before sending those  
 9 comments to Fairchild?

10     A. Yes.

11     Q. I want to come back state side and  
 12 talk about Fullerton a little bit. At the time  
 13 following the Phase IIs as we just saw with Dr.  
 14 Powell, Alcoa was aware, as was Fairchild, that  
 15 there had been an approval for a plan for a soil  
 16 vapor extraction system at the Fullerton  
 17 facility?

18     MR. CHESLER: Your Honor, I  
 19 object. That is not what the testimony was. We  
 20 just heard the expert talk about, he asked the  
 21 same question before, wasn't this an approval of  
 22 the plan. The expert testified clearly it  
 23 wasn't.

24     MR. ZUROFSKY: I think he said it  
 25 was conditioned on the pilot testing, he said

Page 1325

1           JOHN LEASE - CROSS  
 2       A. Okay.  
 3       Q. Is this notifying Fairchild here  
 4 that an investigation had taken place at the  
 5 Fullerton facility prior to this date?

6       A. Yes.

7       Q. That is an investigation that was  
 8 after this Phase II investigation?

9       A. Yes, this would have been after.

10     Q. Let's move forward in time to the  
 11 next correspondence. Actually two forward,  
 12 excuse me. So it is a letter dated April 8th.  
 13 Then I want to go one more past that. The May  
 14 9th. Do you see that, Mr. Lease?

15     A. May 9?

16     Q. May 9, 2005.

17     MR. CHESLER: I don't have a May 9  
 18 in mine. Mine goes to February 15.

19     MR. ZUROFSKY: You don't have that  
 20 letter?

21     MR. CHESLER: It is not in my  
 22 book.

23     THE ARBITRATOR: There is April 8  
 24 and February 8th.

25     Q. Moving forward from April 8 --

Page 1324

Page 1326

1           JOHN LEASE - CROSS  
 2 conditional approved.

3       MR. CHESLER: Conditioned upon the  
 4 pilot testing, you just put that in because I  
 5 objected to your question.

6       THE ARBITRATOR: He used the word  
 7 conditional approval.

8       Q. You understood at the time there  
 9 was conditional approval of a SVE system at the  
 10 Fullerton facility?

11     A. Personally I didn't.

12     Q. Now Fullerton is another facility  
 13 where following the Phase IIs Alcoa conducted  
 14 further investigations; right?

15     A. I believe that's true.

16     Q. If you look under the Fullerton tab  
 17 of the binder I gave you --

18     A. Your binder?

19     Q. Yes, sir.

20     A. Okay.

21     Q. I want to move forward in time  
 22 chronologically. To January 25th, 2005. We  
 23 looked at this letter in connection with  
 24 Torrance but it also applies to the Fullerton  
 25 facility?

1           JOHN LEASE - CROSS

2       THE ARBITRATOR: May 15.

3       Q. We will get the May 9 letter and  
 4 come back to it. We can do it off of May 15.  
 5 Do you see the May 15 letter there, sir?

6       A. Yes.

7       Q. This is a letter from Ms. Hall to  
 8 you; right?

9       A. Yes.

10     Q. She says there "we received your  
 11 letters of April 5 and April 8, 2005 regarding  
 12 Alcoa Fastening systems plant 1 located at 800  
 13 South State College Boulevard, Fullerton." Do  
 14 you see that?

15     A. Yes.

16     Q. She is talking about investigations  
 17 you sent to her on April 5 and April 8; yes?

18     A. Yes.

19     Q. My binder is also a little messed  
 20 up. I am looking for a letter June 9, 2005. I  
 21 apologize this is all out of order. It should  
 22 be one before or one after it, it is a letter  
 23 from Ms. Hall June 9, 2005.

24     MR. CHESLER: I don't have that.

25     A. Not in here.

74 (Pages 1323 to 1326)

1 JOHN LEASE - CROSS  
 2 Q. That is the one we will get to, a  
 3 copy. My apologies for that. We can talk about  
 4 another topic while we're getting that.  
 5 Let's go forward to the section of  
 6 multiple sites at the back, sir.  
 7 A. Okay.  
 8 Q. Do you see that first letter that  
 9 you sent to Mr. Hodge on April 30, 2003,  
 10 hopefully it is there?  
 11 A. April 30, 2003.  
 12 Q. Yes. Do you see that?  
 13 A. Got it.  
 14 Q. Do you know what this relates to?  
 15 A. Pardon?  
 16 Q. Do you know what this relates to?  
 17 A. Yes, it is just reading this, this  
 18 involved the notice that came to Alcoa to the  
 19 Fullerton plant regarding an offsite disposal  
 20 area. It involved Kaynar Technologies, which  
 21 is, I guess the company that owned the Fullerton  
 22 plant before Fairchild.  
 23 Q. Do you recall that Fairchild  
 24 accepted responsibility of this notice, right,  
 25 of the liabilities associated with this notice?

1 JOHN LEASE - CROSS  
 2 Q. He is talking about a meeting you  
 3 had with Mr. Hodge, do you recall that  
 4 discussion?  
 5 A. I recall the meeting, yes.  
 6 Q. That meeting postdated the signing  
 7 of the acquisition, of the deal; right?  
 8 A. Yes.  
 9 Q. What is that?  
 10 A. Signing of the agreement.  
 11 Q. Signing of the agreement.  
 12 A. In July.  
 13 Q. Yes.  
 14 A. Yes.  
 15 Q. It postdated the signing of the  
 16 agreement?  
 17 A. Yes.  
 18 Q. You were not involved in  
 19 negotiating the terms of the agreement?  
 20 A. No.  
 21 Q. Moving forward to tab 4.  
 22 A. Okay.  
 23 Q. Number 1, when you talk about we  
 24 met with Mike Hodge?  
 25 A. Yes.

1 JOHN LEASE - CROSS  
 2 A. I think all offsite claims were  
 3 carved out of the agreement. They agreed to  
 4 take responsibility.  
 5 Q. At the Fullerton site itself was  
 6 the Fullerton site named in a lawsuit by the  
 7 Orange County water commission at some point?  
 8 A. I seem to recall that, yes.  
 9 Q. Did you provide a copy of that  
 10 Complaint to Fairchild when it was named?  
 11 A. I think that correspondence was  
 12 between Sandy Harvey and Fairchild.  
 13 Q. Do you know if Fairchild accepted  
 14 the cost and claims related to that lawsuit,  
 15 accepted responsibility for them?  
 16 A. I don't know. I mean I think that  
 17 correspondence has been primarily between  
 18 lawyers.  
 19 Q. We will get a document and try to  
 20 refresh your recollection on that.  
 21 Now, Mr. Chesler, when he spoke to  
 22 you yesterday asked you about a number of  
 23 documents. I want to work my way through a few  
 24 of them. Turn to tab in his binder tab 1 and 2.  
 25 A. Okay.

1 JOHN LEASE - CROSS  
 2 Q. It says there "We met with Mike  
 3 Hodge on Friday to review Phase II scope of work  
 4 for 14 Fairchild plants." Do you see that?  
 5 A. Yes.  
 6 Q. That is the meeting on November 8  
 7 in Pittsburgh that has been talked about so far?  
 8 A. Yes.  
 9 Q. We briefly reviewed our approach to  
 10 the Phase II work at Fullerton. Was the discuss  
 11 brief at that meeting, Mr. Lease?  
 12 A. Did we discuss what?  
 13 Q. It says here "We briefly reviewed  
 14 our approach to the Phase II work at Fullerton.  
 15 And more generally." Do you see that?  
 16 A. Yes.  
 17 Q. Do you recall that discussion about  
 18 the Phase II work being brief at that meeting?  
 19 A. I believe that is generally  
 20 accurate.  
 21 Q. You went on to say "And more  
 22 generally, Alcoa's approach to remediation  
 23 investigation and remedial action." Do you see  
 24 that?  
 25 A. Yes.

Page 1331

Page 1333

Page 13

1                   JOHN LEASE - CROSS  
2       Q. Do you know if she was still at the  
3 facility after the time of this, of the  
4 acquisition?  
5       A. After the acquisition, yes, she  
6 was.  
7       Q. For how long?  
8       A. I don't recall.  
9       Q. Did Alcoa fire her when it found  
10 out that she had been reporting wrong numbers if  
11 you will to the regulators?  
12      A. I don't know. The matter was  
13 turned over to the compliance group and legal  
14 group. They took it from there.  
15      Q. Do you know if Alcoa has faced any  
16 disciplinary action by the regulators or any  
17 investigation regarding that issue?  
18      A. I don't know.  
19      Q. You don't know?  
20      A. No, I don't.  
21      Q. Did you know that at the time of  
22 the acquisition Fairchild, I think you testified  
23 about this earlier, had already indicated it was  
24 intending to replace that system?  
25      A. What system?

76 (Pages 1331 to 1334)

Page 1335

Page 1337

1 JOHN LEASE - CROSS  
 2 one aside?

3 MR. ZUROFSKY: Yes.  
 4 (Arbitration Exhibit 434  
 5 was marked.)

6 THE ARBITRATOR: Are we coming  
 7 back to this one?

8 MR. ZUROFSKY: We will, your  
 9 Honor. I apologize for that.

10 Q. This letter is the June 9 letter I  
 11 was referring to earlier regarding Fullerton.  
 12 Mr. Lease, does this refresh your recollection  
 13 that Fairchild accepted responsibility for the  
 14 defending Alcoa and Fairchild in connection with  
 15 the lawsuit filed against Fullerton?

16 A. I will take a short read here if  
 17 you don't mind.

18 Well, I am not sure. I am not a  
 19 lawyer, so I am not quite sure what the last  
 20 paragraph means. "Conditionally prepared to  
 21 undertake the defense of the lawsuit." I am not  
 22 sure what the conditions were.

23 Q. It says here the condition is that  
 24 the sites are in fact former Fairchild Fasteners  
 25 facilities. Do you see that there?

1 JOHN LEASE - CROSS  
 2 Q. Did Fairchild accept this claim?  
 3 A. Did they accept?  
 4 Q. This liability here.  
 5 A. They accepted what they accepted in  
 6 the letter.

7 Q. Now I want to go back to St. Cosme.  
 8 This will be 435.

9 (Arbitration Exhibit 435  
 10 was marked.)

11 Q. This is the memo at St. Cosme.  
 12 Have you seen this document before, Mr. Lease.  
 13 A. No, I don't recall seeing this.  
 14 Q. Let's turn to page FAIR 91345. I  
 15 want to see if this refreshes your recollection  
 16 about the matter. Under the heading Waste Water  
 17 Treatment Plant. "The site has explained that  
 18 historically some waste water discharge values  
 19 given to the authorities were wrong because of  
 20 inadequate monitoring methodology." Do you see  
 21 that?

22 A. Yes.

23 Q. Do you understand it to be a report  
 24 as to what the site told the St. Cosme  
 25 regulator? Do you understand that to be a

Page 1336

Page 1338

1 JOHN LEASE - CROSS  
 2 A. Okay.  
 3 Q. You referenced earlier some  
 4 correspondence between Ms. Hall and Mr. Harvey;  
 5 right?

6 A. Yes.

7 Q. This is a letter addressed to you?

8 A. Yes.

9 Q. Does this refresh your recollection  
 10 that since this time Fairchild has in fact  
 11 defended this lawsuit for Alcoa and Fairchild?

12 A. What do you mean defended? They  
 13 will undertake defense, I guess.

14 Q. Have they?

15 A. I don't know.

16 Q. You testified yesterday, did you  
 17 not, facility has not accepted one claim that  
 18 you have submitted to it; right?

19 MR. CHESLER: Your Honor, he  
 20 testified about indemnification claims pursuant  
 21 to 11.6. As counsel well knows, this is  
 22 governed by an entirely different section of the  
 23 agreement, had nothing to do with the prior  
 24 testimony. It is called third-party claims. It  
 25 is in a different section of the agreement.

1 JOHN LEASE - CROSS  
 2 report?

3 MR. CHESLER: Your Honor, again, I  
 4 don't want to be --

5 MR. ZUROFSKY: I'm asking.

6 MR. CHESLER: How can the witness  
 7 testify as a matter of foundation this is a  
 8 report to regulators? He just said he's never  
 9 seen the document before.

10 MR. ZUROFSKY: I am asking if it  
 11 refreshes his recollection as to what Alcoa  
 12 reported to the regulators. You spent whole  
 13 time talking about Alcoa reported to the  
 14 regulators.

15 THE ARBITRATOR: If he knows.

16 MR. ZUROFSKY: Right. If he knows.

17 MR. CHESLER: Can we take, your  
 18 Honor, this is, I know this is not an evidence  
 19 class, may I just read for your Honor the  
 20 question to which I just objected, please.

21 "Question: Do you understand it to  
 22 be a report as to what the site told the St.  
 23 Cosme regulator? Do you understand that to be  
 24 the report?"

25 That doesn't remotely relate to

77 (Pages 1335 to 1338)

1 JOHN LEASE - CROSS  
 2 refreshing his recollection, he is trying to  
 3 testify about something for which this witness  
 4 has absolutely no foundation.

5 THE ARBITRATOR: Well, if  
 6 understand that he can answer the question.  
 7 You're not objecting to these documents, all  
 8 these documents are coming in without  
 9 authenticity.

10 MR. CHESLER: No, your Honor,  
 11 remember, the rule was the document was presumed  
 12 to be admissible unless we stood up and  
 13 objected. I am absolutely objecting. I don't  
 14 know what this document is.

15 MR. ZUROFSKY: We said -- we are  
 16 not talking admissibility. This is a document  
 17 you produced.

18 MR. CHESLER: Excuse me. If we go  
 19 back again to look at the record what we said at  
 20 the beginning of this hearing we said all  
 21 documents will presume to be admissible, if a  
 22 party had an objection they should rise and make  
 23 the objection.

24 THE ARBITRATOR: Any objection as  
 25 to authenticity?

## JOHN LEASE - CROSS

2 MR. CHESLER: I have no idea what  
 3 the document is. I am making objection not to  
 4 authenticity because I don't know what it is, I  
 5 am making objection to admitting this document  
 6 without foundation through a witness who said he  
 7 has no idea what it is, where counsel is making  
 8 representations in a question about reports to  
 9 regulators.

10 MR. ZUROFSKY: You produced this  
 11 document.

12 THE ARBITRATOR: Just a minute,  
 13 please. Where did this document come from?

14 MR. ZUROFSKY: Their files. That  
 15 is what the FAIR number means at the bottom  
 16 right.

17 MR. CHESLER: Okay. Along with  
 18 thousands and thousands of other pages. I am  
 19 objecting to the admissibility of this document.

20 THE ARBITRATOR: Do you want  
 21 somebody to come in and identify this particular  
 22 document?

23 MR. CHESLER: If counsel is going  
 24 to make representations about what it is, it was  
 25 submission to regulators or representations to

1 JOHN LEASE - CROSS  
 2 regulators I am. I have no idea if it is.

3 THE ARBITRATOR: It appears to be  
 4 memorandum of a meeting that was held in the  
 5 facility after your company assumed ownership of  
 6 it. It was produced from your files. I suppose  
 7 it is admissible for whatever it says. If it is  
 8 authentic. You are not questioning its  
 9 authenticity.

10 MR. ZUROFSKY: Are you?

11 MR. CHESLER: I am not questioning  
 12 the fact it was apparently produced from my  
 13 client's files. It has a Bates number on it.

14 THE ARBITRATOR: It is probably  
 15 not appropriate to ask this witness very much  
 16 about it. You can always take a dictionary  
 17 definition of something and ask the witness if  
 18 he agrees with it.

19 MR. CHESLER: Yes. That was not  
 20 the question to which I rose to object.

21 MR. ZUROFSKY: I will make that  
 22 question. You now objected to this document.  
 23 You changed your objection. The question on the  
 24 table are you objecting to admissibility of this  
 25 document?

## JOHN LEASE - CROSS

2 MR. CHESLER: Yes.

3 MR. ZUROFSKY: I will ask you to  
 4 produce any of the following people who are  
 5 listed as participants here so they can  
 6 authenticate it --

7 MR. CHESLER: It says a DRIRE  
 8 division manager, DRIRE inspector and several  
 9 people --

10 MR. ZUROFSKY: Including  
 11 Ms. Tabary who you identified as the person who  
 12 made the report in the first place about  
 13 discrepancies in the waste water treatment  
 14 plant.

15 MR. CHESLER: He just asked the  
 16 witness if she works for us anymore, apparently  
 17 she doesn't.

18 THE ARBITRATOR: I was unclear on  
 19 that. She worked for you after you assumed  
 20 ownership of this facility for some period of  
 21 time?

22 MR. CHESLER: Yes.

23 THE ARBITRATOR: Whether she was  
 24 still there or not, I was not clear.

25 MR. CHESLER: I have no idea.

## 1 JOHN LEASE - CROSS

2 THE ARBITRATOR: Maybe he doesn't  
 3 know either. I don't know. The problem with  
 4 this hearing, gentlemen, you have got dozens of  
 5 volumes of documents that we're not questioning,  
 6 we are letting documents produced by the parties  
 7 into evidence without objection.

8 If we are going to start to object  
 9 to admissibility of documents, I think we are  
 10 going to have to lengthen this hearing.

11 MR. CHESLER: Just so we are  
 12 clear, I rose because counsel asked a question  
 13 of this witness which represented in the  
 14 question that representations were made to  
 15 regulators concerning a document he had said two  
 16 minutes before he had never seen that's why I  
 17 rows to object.

18 MR. ZUROFSKY: That is not what  
 19 you're doing now.

20 THE ARBITRATOR: I will sustain  
 21 your objection. Do you want to rephrase the  
 22 question?

23 MR. ZUROFSKY: I do want to  
 24 rephrase the question about this document.

25 THE ARBITRATOR: Go ahead.

## 1 JOHN LEASE - CROSS

2 Q. Third page FAIR 91345. Waste water  
 3 treatment plant. Do you see that there?

4 A. Yes.

5 Q. It says "The site has explained  
 6 historically some waste water discharge values  
 7 given to the authorities were wrong because of  
 8 inadequate monitoring methodology. They have  
 9 indicated that since the beginning of 2002 the  
 10 values are more accurate and show frequent  
 11 noncompliances in basement water flow and in  
 12 mass flow of heavy metals. It was indicated two  
 13 areas of improvements were current Lucent being  
 14 studied one reduction of effluents at the  
 15 source, two installation of a new waste water  
 16 treatment plants. These aspects are described  
 17 in the application file."

18 Two bullets, "Did we give them the  
 19 spreadsheet summary comparing what we reported  
 20 versus what were the actual values? If so, for  
 21 what period for what time period? No, we did not  
 22 give them those spreadsheets."

23 Second bullet. "It does not sounds  
 24 like they were that upset? Were they? No they  
 25 did not seem to be upset but certainly

1 JOHN LEASE - CROSS  
 2 embarrassed."

3 Mr. Lease, does reading that  
 4 refresh your recollection as to how the  
 5 regulators, about Alcoa's interactions with the  
 6 regulators regarding waste water treatment plant  
 7 issues at St. Cosme?

8 A. I have no recollection about this  
 9 memo or this topic.

10 Q. You testified yesterday with Mr.  
 11 Chesler about a discrepancy in numbers being  
 12 reported to the authorities at the waste water  
 13 treatment plant do you recall that?

14 A. Yes.

15 Q. This document says here they have  
 16 indicated, they being the site indicated since  
 17 beginning of 2002 the values are more accurate.

18 Sir, when did the acquisition take  
 19 place between Fairchild and Alcoa?

20 THE ARBITRATOR: December 2002.

21 A. December 2002.

22 Q. You can put that aside. Mr.  
 23 Chesler asked you yesterday what the DRIRE in  
 24 France wanted Alcoa to do a detailed risk  
 25 assessment, do you remember that testimony?

## 1 JOHN LEASE - CROSS

2 A. No. Can you give me more detail?  
 3 Q. He asked you whether or not the

4 DRIRE, you know what the DRIRE is; right?

5 A. Yes.

6 Q. Wanted Alcoa to do a detailed risk  
 7 assessment at Montbrison. Do you recall him  
 8 asking you that?

9 A. Yes.

10 Q. Were you here for the testimony of  
 11 Mr. George?

12 A. I was in and out of that testimony,  
 13 not for the full time.

14 Q. Do you recall we looked at some  
 15 documents indicating comments by the DRIRE that  
 16 they had no objection to Alcoa proceeding  
 17 voluntarily with the detailed risk assessment?

18 A. I don't specifically recall that.

19 Q. I will read you the document we  
 20 introduced with Mr. George. I will read it to  
 21 you. It should be there from yesterday, if it  
 22 is not I guess we can get you another copy. It  
 23 would be Exhibit 12, if not I can get you  
 24 another copy. You may have it there. It was up  
 25 there yesterday with Mr. George. Not in the

1 JOHN LEASE - CROSS  
 2 book with Mr. George. It is one we handed up.  
 3 I can get another copy right here.

4 THE ARBITRATOR: Is he going to be  
 5 able to add anything to what Mr. George already  
 6 said about this subject?

7 MR. ZUROFSKY: You're right, your  
 8 Honor. We will let the document speak for  
 9 itself. That's fine.

10 THE ARBITRATOR: Mr. George was  
 11 there and had personal knowledge.

12 MR. ZUROFSKY: Fair enough. Your  
 13 Honor, I would like to request a short recess to  
 14 go over that chart with my colleague and see  
 15 what we want to do about that, if anybody.

16 THE ARBITRATOR: All right.

17 (Recess taken.)

18 MR. ZUROFSKY: Your Honor, we  
 19 reviewed the chart. There are some items we  
 20 might have some quibble with. But we are happy  
 21 to brief those off the chart. There is also  
 22 some items that Alcoa is claiming for while they  
 23 technically notice the Phase I, we don't think  
 24 is technical notice. We will brief those. So  
 25 with that and all reservations of course I have

Page 1348

1 JOHN LEASE - REDIRECT  
 2 nothing further at this time.

3 THE ARBITRATOR: Thank you.

4 RE-DIRECT EXAMINATION BY MR. CHESLER:

5 Q. I want to start asking you about  
 6 some questions about the Acquisition Agreement  
 7 related to the topics counsel questioned you  
 8 about.

9 Mr. Lease, would you turn to page  
 10 83 there are various copies which have different  
 11 Bates numbers on them, rather than confuse the  
 12 record with the Bates number, I am interested in  
 13 you looking at page 83 of the contract.

14 A. Okay.

15 Q. You see bottom of page 83 there is  
 16 a section that defines Fasteners Environmental  
 17 Condition. Do you see that?

18 A. My page 84.

19 Q. Okay. We don't even have  
 20 consistent pages. Okay. 84. For the record it  
 21 is section 11.6 E iii. Do you have that?

22 A. Yes.

23 Q. Counsel asked you a number of  
 24 questions about whether you had given notice of  
 25 Fasteners Environmental Conditions, as opposed

1 JOHN LEASE - REDIRECT  
 2 to what you were going to do about it, as  
 3 opposed to how much actions would cost, do you  
 4 recall that subject coming up over and over?

5 A. Yes.

6 Q. I want to take a moment since he  
 7 asked you all these questions about whether you  
 8 gave notice of environmental conditions. I to  
 9 ask you to look at the definition under the  
 10 agreement you were operating under of Fasteners  
 11 Environmental Condition. You see it says "Means  
 12 any" I want you to drop all the way down to  
 13 capital C as in Charlie?

14 A. Okay.

15 Q. "Any violation or alleged  
 16 violation or noncompliance or alleged  
 17 noncompliance with applicable environmental law  
 18 with respect to the Fasteners business that  
 19 commenced prior to the Effective Time."

20 Now, you recall that you provided  
 21 what we previously described as gap analysis  
 22 summaries to Fairchild for four or five  
 23 different facilities?

24 A. Yes.

25 Q. Do you recall you testified those

Page 1350

1 JOHN LEASE - REDIRECT  
 2 were selected because they were the big ones  
 3 which had the largest range of problems  
 4 associated with them?

5 A. Problems as well as operations.

6 Q. Keeping in mind this definition of  
 7 violation or alleged violation or noncompliance  
 8 or alleged noncompliance with environmental law  
 9 with respect to the Fasteners business, did you  
 10 provide in the gap analysis summaries you gave  
 11 Fairchild notice of the existence of Fasteners  
 12 environmental conditions?

13 A. Yes.

14 Q. Did you give such notice with  
 15 respect to the Fasteners Environmental Condition  
 16 of machine guarding requirements not being met?

17 A. Yes.

18 Q. Did you give notice of Fasteners  
 19 Environmental Conditions with respect to fall  
 20 control requirements not being met?

21 A. Yes.

22 Q. Did you give notice of Fasteners  
 23 Environmental Condition with respect to noise  
 24 reduction requirements not being met?

25 A. Yes.

Page 1351

1           JOHN LEASE - REDIRECT  
 2       Q. Did you give notice of the  
 3     Fasteners Environmental Condition with respect  
 4     to lock out tag out requirements not being met?  
 5       A. Yes.  
 6       Q. Did you give notice of Fasteners  
 7     Environmental Condition with respect to confined  
 8     space requirements not being met?  
 9       A. Yes.  
 10      Q. Did you give notice of Fasteners  
 11     Environmental Condition with respect to fire  
 12     prevention requirements not being met?  
 13       A. Yes.  
 14      Q. Did you give notice of a Fasteners  
 15     Environmental Condition with respect to  
 16     electrical safety requirements not being met?  
 17       A. Yes.  
 18      Q. Did you give take of the Fasteners  
 19     Environmental Condition notice with respect to  
 20     mobile equipment requirements not being met?  
 21       A. Yes.  
 22      Q. For all or many of them were  
 23     notices with respect to those conditions given  
 24     in more than one gap analysis summary?  
 25       A. Yes.

Page 1353

1           JOHN LEASE - REDIRECT  
 2     Environmental Conditions we just went through in  
 3     that list, when you provided that notice in the  
 4     gap assessment summaries, did you also tell them  
 5     what your proposed response was with respect to  
 6     each of those conditions?  
 7       A. Yes.  
 8       Q. You told them, for example, we are  
 9     going to go do a study of machine guarding and  
 10    we will fix whatever machines need guarding  
 11    didn't you?  
 12       A. Yes.  
 13       Q. We are going to do study of fall  
 14    control requirements and fix whatever fall  
 15    control requirements aren't met; didn't you?  
 16       A. Yes.  
 17       Q. Etc. down the list; right?  
 18       A. Yes.  
 19       Q. Did they come back to you at any  
 20    time and say to you, prior to this proceeding  
 21    and prior to the time they hired lawyers to  
 22    litigate over the question, did they say to  
 23    you -- I am going to withdraw that. Let me hold  
 24    onto that for a minute.  
 25       I said I want to ask you about a

Page 1352

1           JOHN LEASE - REDIRECT  
 2       Q. In the gap analysis summaries, all  
 3     of which or many of which we have been through  
 4     before -- let me withdraw that and point you to  
 5     another section in the agreement.  
 6       Look at 11.6 C, a few subsections  
 7     earlier. I don't know what page it is on in  
 8     your particular draft 11.6 C.  
 9       A. Yes.  
 10      Q. 11.6 is section entitled Seller  
 11     Environmental Indemnity. C begins with "prior  
 12    to the closing." Do you have that?  
 13       A. Yes, I do.  
 14      Q. I am going to ask you about several  
 15     different parts of this section. But the first  
 16     part I want to ask you about is the last  
 17     sentence. It says "The buyer" that was Alcoa;  
 18     correct?  
 19       A. Correct.  
 20      Q. "Shall afford the sellers a  
 21     reasonable opportunity to comment on the buyer's  
 22     proposed response to a Fasteners Environmental  
 23     Condition."  
 24       Now, when you provided notice to  
 25     Fairchild about all of the Fasteners

Page 1354

1           JOHN LEASE - REDIRECT  
 2     few other provisions in 11.6 C. Let me do that  
 3     before we go to the next topic. If you follow  
 4     along with me under C it says "Prior to the  
 5     closing, both sides will designate a  
 6     representative to receive and consult." You're  
 7     the representative designated by Alcoa; correct?  
 8       A. That's correct.  
 9       Q. Apparently you have been through a  
 10    series of them on the other side. You have been  
 11    the representative throughout on the Alcoa; is  
 12    that right?  
 13       A. Yes.  
 14       Q. It says next sentence "From and  
 15    after the closing, the buyer, Alcoa will conduct  
 16    and control all remedial action and negotiations  
 17    with any government entity in respect of all  
 18    Fasteners Environmental Conditions subject to  
 19    this indemnification." Do you see that?  
 20       THE ARBITRATOR: What provision  
 21    are you reading from?  
 22       MR. CHESLER: 11.6, C your Honor  
 23    from the second sentence, C as in Charlie.  
 24       THE ARBITRATOR: Thank you.  
 25       Q. Do you see that section, Mr. Lease?

81 (Pages 1351 to 1354)

## 1 JOHN LEASE - REDIRECT

2 A. Yes.

3 Q. To the best of your knowledge with  
 4 respect to all those government interactions  
 5 that counsel asked you about on  
 6 cross-examination, did Alcoa conduct and control  
 7 those just as the contract said it had a right  
 8 to do?

9 A. Yes, we did.

10 Q. Does it say anything in here that  
 11 the Fairchild Fasteners get to conduct them?

12 A. That they get to conduct them?

13 Q. Yes.

14 A. No, it doesn't.

15 Q. Does it say they have any control  
 16 over them?

17 A. No.

18 Q. Does it even say that you consult  
 19 with them and talk to them about what you should  
 20 or shouldn't do with the government regulators?

21 A. No, it does not.

22 Q. If you go further down, staying in  
 23 11.6 C, I don't know where on your copy of the  
 24 document this appears, I can't tell you how many  
 25 lines up from the bottom of the page it is. I

## 1 JOHN LEASE - REDIRECT

2 want you to find the sentence if you can that  
 3 reads as follows "The buyer will provide the  
 4 sellers' representative and the sellers'  
 5 environmental consultants with reasonable access  
 6 to the properties of the Fasteners business." I  
 7 am going to stop there for a moment.

8 Do you have that sentence?

9 A. Yes.

10 Q. In all the time you've been the  
 11 representative of Alcoa under this provision,  
 12 since the provision went into effect, have they  
 13 ever once at Fairchild asked you to have any  
 14 access, reasonable or otherwise, to a single one  
 15 of these facilities?

16 A. No.

17 Q. Then it says "And," continuing in  
 18 the same sentence, "And copies of all  
 19 nonprivileged information with respect to the  
 20 remedial actions to be taken in respect of such  
 21 environmental actions."

22 This provision about providing them  
 23 with copies of information relates directly to  
 24 something called remedial actions; right?

25 A. Yes.

## 1 JOHN LEASE - REDIRECT

2 Q. Stay with me for a moment. I want  
 3 you know to find the section 11.6 E little Roman  
 4 6, VI.

5 A. Okay.

6 Q. That is entitled remedial action.  
 7 Do you have that section?

8 A. Yes.

9 Q. So this is the subject matter as to  
 10 which the provision we were just looking at says  
 11 that you're supposed to give them copies of  
 12 nonprivileged information with respect to the  
 13 remedial actions to be taken in respect of such  
 14 environmental actions; right?

15 A. Right.

16 Q. This provision we don't have to  
 17 read it, but it basically relates to  
 18 environmental contamination laws, doesn't it,  
 19 CERCLA, talks about cleaning up, removing,  
 20 abating hazardous materials, preventing the  
 21 release or threat of release or further release  
 22 of hazardous materials and performance of  
 23 studies and investigations with respect to those  
 24 particular subsequent; right?

25 A. Correct.

## 1 JOHN LEASE - REDIRECT

2 Q. So this provision about giving  
 3 materials, this has nothing to do with fixing  
 4 machine guarding and noise control. This has to  
 5 do with these hazardous materials and particular  
 6 environmental clean-up requirements that are  
 7 laid out in that remedial action section; right?

8 A. That is my understanding, yes.

9 Q. To the best of your knowledge in  
 10 the Phase Is that take up half of the top shelf  
 11 in the Phase IIs that take up about half the  
 12 second shelf, in all that correspondence and  
 13 reports that take up the bottom two shelves, did  
 14 you give them whatever documents you had that  
 15 related to the actions to be taken with respect  
 16 to the remedial -- with respect to remedial  
 17 actions concerning these particular types of  
 18 environmental conditions?

19 A. I believe we have.

20 Q. If you go down a couple lines past  
 21 that, by the way the next sentence says "The  
 22 buyer will select consultants and contractors to  
 23 implement such remedial actions who shall be  
 24 reasonably acceptable to parent." I will stop  
 25 there for a second.

Page 1359

1           JOHN LEASE - REDIRECT  
 2        There was some comments about you  
 3        getting rid of one set of consultants and hiring  
 4        something called Mission Geoscience; right?  
 5        A. Yes. Mission Geoscience.  
 6        Q. In all the time since Fairchild has  
 7        known you hired Mission Geoscience, has anybody  
 8        ever told you that they were unacceptable to  
 9        Fairchild?  
 10      A. No. All I seen is comments we  
 11     didn't tell them that we were going to use them.  
 12     They never said they were not acceptable.  
 13      Q. Then it says going on there, "you  
 14     will provide the sellers' representative and its  
 15     consultants with copies of all reports,  
 16     analytical data, correspondence, directives,  
 17     orders and documents submitted to or received by  
 18     the buyer from any government entity in  
 19     connection with the remedial action." Let's  
 20     stop there.  
 21     Does it tell you when you have to  
 22     give the materials received from or given to a  
 23     government entity?  
 24      A. No.  
 25      Q. Just says you have to give it to

Page 1360

1           JOHN LEASE - REDIRECT  
 2        them; right?  
 3        A. Right.  
 4        Q. So far as you know did you give  
 5        them whatever you got from or gave to the  
 6        government?  
 7        A. As far as I know, we did.  
 8        Q. So all these questions they asked  
 9        you about, why didn't you give us the decree,  
 10      the draft decree before it was signed or the  
 11      decree the minute it was signed, you gave them  
 12      whatever government documents you have?  
 13      A. Yes.  
 14      Q. Then it says "And other  
 15      nonprivileged documents created or received by  
 16      or on behalf of the buyer in connection with the  
 17      remedial action."  
 18      Again, that goes back to the things  
 19      in the bookcase we talked about before; correct?  
 20      A. Correct.  
 21      Q. Now, they showed you, they said a  
 22      box full, I looked at it, it wasn't quite a box  
 23      full. It was a pile of paper about some study  
 24      done in one of the facilities about machine  
 25      guarding; right?

Page 1361

1           JOHN LEASE - REDIRECT  
 2        A. Right.  
 3        Q. You didn't know whether that was  
 4        given to the Fairchild people or not; was that  
 5        your testimony?  
 6        A. My best recollection we did provide  
 7        that to them.  
 8        Q. I want to ask you about machine  
 9        guarding, they spent a lot of time on that.  
 10      Before we get to that particular report and what  
 11      you did and didn't give them, you remember you  
 12      said in answer to several of counsel's questions  
 13      when he was asking you about whether you gave  
 14      them correspondence after particular dates, you  
 15      kept saying, yeah, but what about the Phase Is  
 16      we gave them. Remember that?  
 17      A. Yes.  
 18      Q. I want to show you seven Phase I  
 19      reports.  
 20      MR. CHESLER: Your Honor, these  
 21      are all in bulk Exhibit A on the top shelf.  
 22      Each one of them indicates where in Exhibit A  
 23      they appear.  
 24      THE ARBITRATOR: The book you  
 25      previously had with him, none of those appears?

Page 1362

1           JOHN LEASE - REDIRECT  
 2        MR. CHESLER: Just excerpts of a  
 3        few. These are the actual Phase Is. I will  
 4        hand your Honor a set. I don't want to load you  
 5        up unnecessarily with paper. Obviously you can  
 6        keep them if you like. I don't want to burden  
 7        you with more than you need.  
 8        Q. Now, counsel asked you a lot of  
 9        questions about machine guarding at Fullerton  
 10      and a few other locations, what you did and  
 11      didn't tell or did or didn't give Fairchild.  
 12      By the way, before I get to the  
 13      Phase Is, one preliminary question, at one point  
 14      you said something like mentioning machine  
 15      guarding in a single gap letter constituted  
 16      notice with respect to all of the facilities.  
 17      Do you remember generally saying something like  
 18      that?  
 19      A. Yes.  
 20      Q. In fact with respect to machine  
 21      guarding, did your notice of the Fasteners  
 22      Environmental Condition of machine guarding  
 23      requirements not being complied with, did that  
 24      go to them in one gap summary notice letter and  
 25      only in one?

83 (Pages 1359 to 1362)

Page 1363

## 1 JOHN LEASE - REDIRECT

2 A. No. I don't recall the total  
 3 number. But I know it was an issue at all the  
 4 facilities that we visited and reported on.

5 Q. What I want you to do, let's start  
 6 with Fullerton. That should be the first one in  
 7 your pile. This is Exhibit A, volume 3.

8 A. Okay.

9 Q. That is where it appears. I want  
 10 you to look at page 52. Again, that is the  
 11 original printed page 52 not Bates number page.

12 A. Okay.

13 Q. Do you have that?

14 A. Yes.

15 Q. You see under occupational safety,  
 16 in the Phase I for Fullerton it is reported the  
 17 plant received two citation and notification of  
 18 penalties in October of '01?

19 A. Yes.

20 Q. It goes on to say, I am looking at  
 21 the third paragraph under occupational safety,  
 22 "second citation was related to machine guarding  
 23 for seven punch presses etc., " it goes on they  
 24 were ordered to comply, they had to pay a fine.  
 25 Do you see all that?

Page 1364

## 1 JOHN LEASE - REDIRECT

2 A. Yes.

3 Q. Now let's go to the recommendations  
 4 in the back, page 71. Page 71 under Compliance  
 5 Issues, second paragraph, last sentence says "It  
 6 is recommended that the facility ensure that all  
 7 machinery -- "

8 THE ARBITRATOR: What page are you  
 9 on?

10 MR. CHESLER: Sorry, page 71, your  
 11 Honor. That is the original printed page 71.  
 12 Under Compliance Issues. This is the Phase I  
 13 report for Fullerton, California.

14 Q. It says "It is recommended that the  
 15 facility ensure that all machinery be equipped  
 16 with proper guarding."

17 This report was sent to Fairchild  
 18 well before the deal ever closed; wasn't it?

19 A. Yes.

20 Q. Now let's look at Stoughton,  
 21 Massachusetts.

22 A. Okay.

23 Q. I want you to look at page 32.  
 24 This is, this comes from bulk Exhibit A, volume  
 25 5. Printed page 32.

Page 1365

## 1 JOHN LEASE - REDIRECT

2 A. Okay.

3 Q. This is from the conclusions and  
 4 recommendations in the Phase I report. And  
 5 under compliance issues, last paragraph on  
 6 page 32. It informs you and ultimately  
 7 Fairchild that ERM observed some of the  
 8 machines --

9 THE ARBITRATOR: Hold on a minute.  
 10 I will get to page 32. There are several page  
 11 32s in here. I have it. Thank you.

12 MR. CHESLER: Okay. Bottom of the  
 13 page, your Honor, last paragraph.

14 Q. "ERM observed some of the machines  
 15 are outfitted with what appears to be adequate  
 16 guarding protection, however many of the  
 17 machines do not have adequate machine guarding"  
 18 then it cites to a section of the federal  
 19 regulations, CFR. Do you see that?

20 A. Yes.

21 Q. "It is recommended the facility  
 22 undertake a survey of machine guards and ensure  
 23 that all machinery meet minimum manufacturer  
 24 guarding requirements." Correct?

25 A. Correct.

Page 1366

## 1 JOHN LEASE - REDIRECT

2 Q. Let's look at St. Cosme, volume 15  
 3 from bulk Exhibit A. In particular, I want you  
 4 to turn to printed page 37.

5 A. Okay.

6 Q. Printed page 37, St. Cosme, Phase  
 7 I. Third full paragraph on the page. Says "70  
 8 percent, according to the information provided  
 9 70 percent of all the machinery on site complies  
 10 with French National machinery safety  
 11 requirements, safety analysis were performed by  
 12 trained employees. ERM observed a number of  
 13 machinery which are suspected not to be in full  
 14 compliance with the machine guarding  
 15 requirements. It is recommended that a full  
 16 inspection of all the machines be conducted by  
 17 an external qualified organization."

18 That is what you passed on to  
 19 Fairchild before the -- or it was passed on by  
 20 Alcoa before the closing; correct?

21 A. Correct.

22 Q. Now let's look at Montbrison, which  
 23 is in volume 11.

24 THE ARBITRATOR: The next one I  
 25 have is Roques. Whatever order you want to take

84 (Pages 1363 to 1366)

Page 1367

Page 1369

1 JOHN LEASE - REDIRECT  
 2 them. That is the order you gave them to me.  
 3 You want to do Montbrison.

4 MR. CHESLER: Montbrison. Your  
 5 Honor. Let's do Roques. I didn't have it in my  
 6 pile. I apologize.

7 THE ARBITRATOR: This is also  
 8 known as Toulouse?

9 MR. CHESLER: Yes.

10 Q. If you look at page 31, printed  
 11 page 31.

12 A. Okay.

13 Q. First full paragraph. "A machine  
 14 guarding upgrade program is ongoing in order to  
 15 comply with the safety requirements stipulated  
 16 in French decree 93-40, no EC Complaint label  
 17 was noted on the machines at the time of the  
 18 visit. This upgrade program should also reduce  
 19 cuts and other accidents described above."

20 I am told I said Complaint, I  
 21 should have read compliance, I apologize.

22 THE ARBITRATOR: EC, European  
 23 Community label that is what you're talking  
 24 about?

25 MR. CHESLER: Yes, I believe so.

Page 1368

Page 1370

1 JOHN LEASE - REDIRECT

2 Q. Would you look at page 38 in the  
 3 same Phase I report. Again for Toulouse. Page  
 4 38.

5 A. Okay.

6 Q. Next to the last paragraph on the  
 7 page. Printed page of the Toulouse report.  
 8 Next to the last paragraph. It says "Site  
 9 management" by the way, site management that ERM  
 10 was reporting about here was Fairchild's site  
 11 management; right?

12 A. Right.

13 Q. They still owned this plant.

14 A. Correct.

15 Q. At the time. It says "They are  
 16 aware of the following noncompliance health and  
 17 safety issues. The site has yet to complete the  
 18 last phase of the machine guarding/upgrade plan  
 19 estimated to be completed during 2002" goes on  
 20 then to talk about fire protection.

21 Then the last sentence says "It is  
 22 recommended that the facility representatives  
 23 complete the machine guarding program and make  
 24 the fire fighting system fully operational."

25 That is what you read in the

1 JOHN LEASE - REDIRECT  
 2 report. It was sent on to Fairchild; correct?  
 3 A. Correct.  
 4 Q. Now let's look at Montbrison.  
 5 Which is in volume 11 of the bulk exhibit.  
 6 Let's look at page 27. Sorry, first page 20. I  
 7 apologize. Page 20. Montbrison. Bottom of the  
 8 page under Occupational Safety.

9 A. Okay.

10 Q. Do you see it says there is "A plan  
 11 for putting the machines in compliance with the  
 12 EC regulations, however it has not been  
 13 completed. The plan was stopped due to work  
 14 overload and planning for this activity was  
 15 given to the work inspection team and the  
 16 retrofit was expected to have been completed by  
 17 the end of 2001."

18 So they had a plan in place, they  
 19 were retrofitting the machines, putting the  
 20 guards on, they stopped the program and although  
 21 it had been expected to have been completed by  
 22 end of '01 apparently it was not done as of this  
 23 point in '02; correct?

24 A. Correct.

25 Q. Now, if you go to page 27. You see

1 JOHN LEASE - REDIRECT  
 2 in the second full paragraph, no I guess the  
 3 third full paragraph on the page it repeats that  
 4 the site has not completed the safety plan for  
 5 putting the machine into compliance with EC  
 6 Regs?

7 THE ARBITRATOR: Page 27?  
 8 MR. CHESLER: Yes. Third  
 9 paragraph.

10 Q. It says "It is recommended this  
 11 plan be completed and applied to ensure worker  
 12 safety," that is completed and applied to put  
 13 the machines in compliance with EC regulations;  
 14 correct?

15 A. Correct.

16 Q. Now, let's look at Hildesheim,  
 17 Phase I for Hildesheim. Page 29 printed page  
 18 29. You see at the very bottom of 29 and over  
 19 to the top of 30, it says "The German  
 20 legislation requires that employees be protected  
 21 against risks during their work during a site  
 22 inspection the authorities noted an open area on  
 23 a machine which must be closed." It says "that  
 24 puts the employees in potential danger. And it  
 25 is recommended that a system be put in place to

1           JOHN LEASE - REDIRECT  
 2 ensure worker safety through proper machine  
 3 guarding." Correct?  
 4       A. Correct.  
 5       Q. Let's look at Kelkheim. Page 23 of  
 6 the Phase I for Kelkheim. Under Compliance  
 7 Issues. The last paragraph under Compliance  
 8 Issues. It says, again, here as it did in the  
 9 prior report, the other German facility that  
 10 "German law requires employees be protected  
 11 against risk during their work and at press and  
 12 drilling units machine guarding was found to be  
 13 a need of improvements as a result of internal  
 14 risk assessment. The recommendation is that a  
 15 system be put in place to assure that proper  
 16 safety precautions be adhered to." Correct?

17      A. Correct.

18      Q. Just to putting again the  
 19 chronology in place, after all the Phase Is are  
 20 sent, after the deal closes, the gap analyses  
 21 are done and in the first months of '03 you send  
 22 at least four separate letters about four major  
 23 sites, every one of them mentions machine  
 24 guarding which you previously told us is a  
 25 Fasteners Environmental Condition you notified

1           JOHN LEASE - REDIRECT  
 2 them of and informed them of what your plan was  
 3 to do about it; correct?

4       A. Correct.

5       THE ARBITRATOR: These reports you  
 6 went through are all Phase I; right?

7       MR. CHESLER: Yes, your Honor.

8 They were all provided during 2002. Prior to  
 9 the closing of the transaction in December.

10      Q. Now, you understand, don't you, Mr.  
 11 Lease, that Fairchild' position with respect to  
 12 machine guarding is that they won't pay for it  
 13 because it's not covered by the indemnity  
 14 provision; isn't that your understanding of  
 15 their position?

16      A. I think they specifically say it is  
 17 not a Fasteners Environmental Condition.

18      Q. So you can notify them from now  
 19 until the cows come home, they say that's  
 20 interesting, but you are notifying us about  
 21 something we are not obligated to pay under any  
 22 circumstances; isn't that what they have told  
 23 you?

24      A. Essentially, yes.

25      Q. This isn't a notice issue, this is

1           JOHN LEASE - REDIRECT  
 2 a definitional issue; isn't it?

3       A. Yes.

4       Q. By the way, Mr. Zurofsky must have  
 5 said eight times during the cross-examination  
 6 you're still doing machine guarding work, you  
 7 have got more to do. Do you recall him saying  
 8 that?

9       A. Yes.

10      Q. I'll tell you the numbers they are  
 11 what they are, it indicates you spent maybe  
 12 something on the order of 3 million so far on  
 13 machine guarding. You understand that Alcoa is  
 14 estimating it has something like \$15 million  
 15 more machine guarding expense staring it in the  
 16 face?

17      A. I am vaguely aware of that. I  
 18 think the business prepared some kind of  
 19 estimate around that, yes.

20      Q. As far as you know through the  
 21 prior communications you did before we got into  
 22 this dispute resolution process and through all  
 23 the materials that have been provided to  
 24 Fairchild's counsel through this dispute  
 25 resolution process, are you aware of anything

1           JOHN LEASE - REDIRECT  
 2 the company has done, any study, any analysis,  
 3 any report relating to machine guarding that  
 4 they don't have?

5       A. Not at this point, no.

6       Q. So they have got everything, I will  
 7 tell you they had it for three, four months,  
 8 that is the lawyer's job, we produced  
 9 everything, everything was produced at least by  
 10 last September. You have \$15 million more to  
 11 spend, counsel says you are doing it, he knows  
 12 you still have to spend more money, to this day  
 13 have you gotten a single comment from Fairchild  
 14 about machine guarding ahead of all the \$15  
 15 million you haven't spent yet?

16      A. No, I have not.

17      Q. Let me ask you to look at what we  
 18 marked as Exhibit 165.

19      THE ARBITRATOR: Before you change  
 20 the subject, Mr. Chesler, while we are on this  
 21 subject I have a question.

22      MR. CHESLER: Yes, sir.

23      THE ARBITRATOR: Of the witness.  
 24 I know in this arbitration Fairchild has made  
 25 definitional objections to the inclusion of

## 1 JOHN LEASE - REDIRECT

2 machine guarding based on the definitions in the  
 3 contract. But as I am trying to recall all of  
 4 the letters they wrote, it seemed to me that a  
 5 number of those letters they ask for more  
 6 information on machine guarding and various  
 7 other things.

8 THE WITNESS: They asked for more  
 9 information on assessments, reports, so forth.

10 THE ARBITRATOR: In other words,  
 11 did they actually make this definitional  
 12 objection to you in the course of this or is  
 13 that something that has just come up more  
 14 recently with the lawyers in the arbitration? Do  
 15 you recall?

16 THE WITNESS: Well, I believe  
 17 there is correspondence from Fairchild prior to  
 18 this arbitration where they have stated machine  
 19 guarding, we have not demonstrated that machine  
 20 guarding is a Fasteners Environmental Condition.

21 THE ARBITRATOR: They made that  
 22 objection, but at the same time they asked for  
 23 more documentary information about this subject,  
 24 because they had more than one ground of  
 25 objection.

## 1 JOHN LEASE - REDIRECT

2 THE WITNESS: Well, initially  
 3 they did ask for more information. Subsequently  
 4 when we sent them basically claims, they  
 5 basically said --

6 THE ARBITRATOR: That they had no  
 7 liability?

8 THE WITNESS: Yes.

9 THE ARBITRATOR: All right. Go  
 10 ahead Mr. Chesler.

11 MR. CHESLER: Yes, your Honor.

12 Thank you. Your Honor, I would like to show the  
 13 witness we have marked as Alcoa Exhibit 165.

14 Q. The first page and back of the  
 15 first page is in French, but if you turn to the  
 16 next page you will see an English translation  
 17 this was produced from the files we inherited  
 18 from Fairchild. This relates, your Honor, to  
 19 the St. Cosme facility in France.

20 You see, Mr. Lease, in the middle,  
 21 I am on the English page which ends with the  
 22 number 726 at the bottom right-hand corner. Are  
 23 you there?

24 A. Yes.

25 Q. You see in the middle page there is

## 1 JOHN LEASE - REDIRECT

2 a letter from apparently the labor inspector for  
 3 the district in which St. Cosme is located  
 4 saying significant measures must be taken in  
 5 order to reduce the exposure of employees to  
 6 noise pollution. Then I want you to look down  
 7 one paragraph below that. "The moving housed  
 8 parts of the machines must be in housings. This  
 9 placement in conformity cannot be limited to the  
 10 new machines or those that you consider the most  
 11 dangerous."

12 Then it goes on to say "You are  
 13 using products that are hazardous to the health  
 14 of the employees" and cites labor code they say  
 15 prohibits that.

16 You recall on cross-examination you  
 17 said several times your understanding was that  
 18 you were in many instances informing Fairchild  
 19 of problems about which they already knew?

20 A. Yes.

21 Q. When you were doing the gap  
 22 analysis and traveling around to the different  
 23 sites were you told by the former Fairchild  
 24 employees about a lot of these Fasteners  
 25 Environmental Conditions that they already knew

## 1 JOHN LEASE - REDIRECT

2 about before you got there?

3 A. Yes.

4 Q. Including the machine guarding  
 5 problems at St. Cosme?

6 A. Yes. We spoke with people in the  
 7 maintenance organization as well as EHS staff  
 8 around machine guarding and production.

9 Q. Let me show you Exhibit 95. This  
 10 is also from the former Fairchild files relating  
 11 to St. Cosme. Again it begins in French then  
 12 goes to English would you look at the page that  
 13 ends the page that ends 729.

14 A. Okay.

15 Q. You see this again is from back in  
 16 the year 2000. At that time Fairchild owned the  
 17 St. Cosme facility; correct?

18 A. Correct.

19 Q. You see there are estimates here  
 20 for machine guarding on a whole list, long list  
 21 of different machines used in the St. Cosme  
 22 facility?

23 A. Yes.

24 Q. This estimate from 2000 is over 6  
 25 million Euros; do you see that?

Page 1379

1           JOHN LEASE - REDIRECT  
 2       A. Yes.  
 3       Q. Francs, excuse me.  
 4       A. Yes.  
 5       Q. Now, when you in fact inherited St.  
 6 Cosme, was there still substantial machine  
 7 guarding work that Alcoa had to do?  
 8       A. Yes, there was.  
 9       Q. That was pointed out in the Phase  
 10 Is and pointed out again in the gap analysis;  
 11 correct?  
 12      A. Yes. It was.  
 13     THE ARBITRATOR: Just looking at  
 14 this letter --  
 15    MR. CHESLER: 95, your Honor.  
 16    THE ARBITRATOR: Yes. The one  
 17 we're on now. Simmons was the name of  
 18 Fairchild's facility in St. Cosme?  
 19    MR. CHESLER: Yes.  
 20    THE ARBITRATOR: This was a letter  
 21 I am trying to figure out what exactly this is.  
 22    MR. CHESLER: This apparently was  
 23 a report that was done by consultants for them  
 24 internally at their facility on among other  
 25 things, costs of equipping a whole long list of

Page 1380

1           JOHN LEASE - REDIRECT  
 2 machines used at the facility for machine  
 3 guarding, two years before.  
 4       THE ARBITRATOR: This was an  
 5 internal report?  
 6       MR. CHESLER: Yes.  
 7       THE ARBITRATOR: Top right-hand  
 8 side it says labor inspector Mr. Caspar, with an  
 9 address.  
 10      MR. CHESLER: Apparently what they  
 11 did is shared this information with the labor  
 12 inspection, the actual estimates as far as we  
 13 can tell were done internally within the  
 14 company. Either entirely or in large measure  
 15 the replacement were not done, Alcoa then bought  
 16 the facility.  
 17      THE ARBITRATOR: This list we were  
 18 referring to on 729 is a list of the machines  
 19 they're talking about? Amtec Tower, Davenport  
 20 Tower?  
 21      THE WITNESS: Yes, there is a  
 22 list on the other side, also, a two page table,  
 23 I believe.  
 24      THE ARBITRATOR: Thank you.  
 25      Q. I would like to switch to a

Page 1381

1           JOHN LEASE - REDIRECT  
 2 different topic. That is the topic of  
 3 groundwater at Torrance which was the subject of  
 4 a lot of questioning during your  
 5 cross-examination.  
 6       So the subject is the groundwater  
 7 issue at the Torrance facility in California;  
 8 Mr. Lease.  
 9       A. Yes.  
 10      Q. Do you remember you were questioned  
 11 at some length about that on cross-examination.  
 12 I would like to start with Alcoa Exhibit 120.  
 13 You see this appears to be document entitled  
 14 Schedule 324 environmental matters.  
 15      A. Yes.  
 16      Q. You remember that there were  
 17 various schedules attached to the agreement the  
 18 agreement between Alcoa and Fairchild?  
 19      A. Yes.  
 20      Q. I want you to look at the first  
 21 page of this document. At the bottom of the  
 22 first page, the last entry entitled Fairchild  
 23 South Bay, Torrance. Do you see that?  
 24      A. Yes.  
 25      Q. It says "Air permit violation" then

Page 1382

1           JOHN LEASE - REDIRECT  
 2 there is some reference to an air permit  
 3 violation.  
 4       A. Okay.  
 5       Q. Do you see anything in there about  
 6 a groundwater problem at Torrance?  
 7       A. No.  
 8       Q. You were asked 30, 40, 50  
 9 questions, maybe more about the groundwater  
 10 problems that were going on while Fairchild  
 11 owned it and what Alcoa did and the studies  
 12 Alcoa did to follow-up on the groundwater  
 13 problems when it took over. Do you remember  
 14 that subject?  
 15      A. Yes.  
 16      Q. Nothing in this disclosure schedule  
 17 you're aware of from Fairchild that said  
 18 anything to Alcoa about a groundwater problem.  
 19 They talked about air permit violation. Do you  
 20 see that?  
 21      A. I see that.  
 22      Q. Let's look at moving  
 23 chronologically Alcoa Exhibit 143. You're  
 24 aware, are you, that among the documents that  
 25 Fairchild provided from time to time to its

88 (Pages 1379 to 1382)

Page 1383

Page 1385

1           **JOHN LEASE - REDIRECT**  
 2 auditors as Alcoa does to its auditors were  
 3 documents disclosing potential liabilities to  
 4 the company for which the accountants needed to  
 5 be on notice?

6           A. I am aware of that general report.  
 7 Yes.

8           Q. The document I just placed in front  
 9 of you, Exhibit 143 appears to be a letter to  
 10 Ernst & Young regarding the Fairchild  
 11 Corporation dated August 29, 2002. On the back  
 12 page you will see the signature line is by  
 13 Michael Hodge. There is a copy to Donald  
 14 Miller, general counsel of the company. Do you  
 15 see that?

16          A. Yes.

17          Q. Do you know whether the due  
 18 diligence team at Alcoa looked at the reports  
 19 that Fairchild provided to its auditors looking  
 20 for what disclosures of EHS risks had been  
 21 provided to the auditors?

22          A. The due diligence team?

23          Q. Yes.

24          A. I don't have firsthand knowledge of  
 25 that, no.

1           **JOHN LEASE - REDIRECT**  
 2 materials, waste oil, oily waste, etc., that  
 3 there have been spills and leaks of PCE and  
 4 other materials at all four areas they looked  
 5 at?

6           A. Yes.

7           Q. That in one area levels of mineral  
 8 spirits reached over 20,000 parts per million at  
 9 a depth of 25 feet. The tank installation  
 10 practices in one area were poor.

11          Then it says "Remedial activities  
 12 have been undertaken at all four areas to  
 13 different degrees" talks about soil confirmation  
 14 sampling being performed in two areas, residual  
 15 soil contamination remains in all four areas.  
 16 Do you see that?

17          A. Yes.

18          Q. Then it says, "Groundwater believed  
 19 to be present in discontinuous lenses at a depth  
 20 of about 90 feet beneath the site. No  
 21 groundwater wells have been installed at the  
 22 site, it is therefore unknown whether any of the  
 23 leaks that they were talking about up above have  
 24 affected shallow or deeper groundwater."

25          Then the Phase I says "It is

Page 1384

Page 1386

1           **JOHN LEASE - REDIRECT**

2          Q. The document speaks for itself. If  
 3 you don't have firsthand knowledge of it then I  
 4 am not going to ask you about that one.

5          Now I want to show you the Phase I  
 6 report for Torrance. Okay.

7          A. Okay.

8          Q. We looked at the first version of  
 9 the disclosure schedule that was attached to the  
 10 agreement. Now I want you to look at the Phase  
 11 I report for Torrance. This comes from bulk  
 12 Exhibit A, volume 6.

13          Would you turn to printed page 49,  
 14 please.

15          A. Okay.

16          Q. Do you have printed page 49?

17          A. Yes. I do.

18          Q. Do you see property issues, the  
 19 heading at the top of the page?

20          A. Yes.

21          Q. Do you see toward the top, it talks  
 22 about how there are at least 14 underground  
 23 storage tanks at the facility?

24          A. Yes.

25          Q. That they have stored PCE and other

1           **JOHN LEASE - REDIRECT**

2 recommended that a Phase II investigation be  
 3 performed in all four of these areas to confirm  
 4 sufficient remedial activities have been  
 5 performed. Since no groundwater testing has  
 6 been performed it is recommended that  
 7 groundwater samples be collected using hydro  
 8 punch techniques in each of the four areas. And  
 9 as necessary, based on field observations, etc."

10          So far as you know after this was  
 11 provided to Fairchild and talked about doing  
 12 Phase II drilling down into the ground, checking  
 13 to see if the groundwater was contaminated with  
 14 these substances, did anybody at Fairchild say  
 15 to you don't do this, we do not want any further  
 16 work done pursuing this groundwater problem at  
 17 Torrance?

18          A. Not to me, no.

19          Q. We heard prior testimony there was  
 20 amended Schedule 3.24 provided to Alcoa. I want  
 21 to show you Alcoa Exhibit 119.

22          I would like you to look on the  
 23 second page of 119 which has Bates number ending  
 24 20 on it. Do you have that?

25          A. Yes.

## 1 JOHN LEASE - REDIRECT

2 Q. You see there are two entries for  
 3 Fairchild Fasteners toward the top, on the top  
 4 half of the page?

5 A. Yes.

6 Q. In Torrance -- sorry, one in  
 7 Torrance. The first full entry on the page.

8 A. Yes.

9 Q. I will tell you that is the only  
 10 one for Torrance in this disclosure schedule.  
 11 Do you see anything in there about the  
 12 groundwater problem?

13 A. No, I do not.

14 Q. It wasn't in the first one, wasn't  
 15 in the second one. But your consultants found  
 16 it and reported on it in the Phase I; correct?

17 A. That's correct.

18 Q. So the Phase II was in fact done as  
 19 recommended in the Phase I report for Torrance;  
 20 wasn't it?

21 A. Yes.

22 Q. Before the Phase II was done you  
 23 recall you testified both on direct-examination  
 24 and cross-examination about scopes of work that  
 25 were prepared and provided to Fairchild?

## 1 JOHN LEASE - REDIRECT

2 A. Yes.

3 Q. Let me show you, this is E. I am  
 4 told you may have one, your Honor, I don't know  
 5 if you do not. Exhibit E these are the scopes  
 6 of work for Phase IIs. Would you turn to the  
 7 tab labeled Torrance. Do you have that?

8 A. Yes.

9 Q. You see on the first page behind  
 10 that tab which ends with Bates number 387?

11 A. Okay.

12 Q. It gives a list of, there is a  
 13 chart in the middle of the page, gives sample  
 14 locations, media, depth, sample type, analytical  
 15 parameters, do you see all those columns?

16 A. Yes, I do.

17 Q. Do you see the second entry and  
 18 sixth entry?

19 A. Yes.

20 Q. Both talk about sampling  
 21 groundwater?

22 A. Yes.

23 Q. In two different sample locations;  
 24 correct?

25 THE ARBITRATOR: I am under

## 1 JOHN LEASE - REDIRECT

2 Torrance?

3 MR. CHESLER: Yes, your Honor in  
 4 the middle of the page, the chart.

5 THE ARBITRATOR: First page.

6 MR. CHESLER: Yes. First page  
 7 which ends with Bates number 387. Lower  
 8 right-hand corner. Middle of the page, the  
 9 chart that has columns that start with Sample  
 10 Location.

11 THE ARBITRATOR: Yes.

12 MR. CHESLER: Second line entry A  
 13 1 groundwater.

14 THE ARBITRATOR: Right.

15 MR. CHESLER: Then sixth entry A 4  
 16 groundwater.

17 Q. So in the SOWs that you provided to  
 18 Fairchild, the scopes of work for Phase IIs that  
 19 you provided, then met about in November, you  
 20 told them, didn't you, that among all the other  
 21 things you were going to do was you were going  
 22 to do testing in the Phase IIs of groundwater at  
 23 sample depths of about 90 feet using monitoring  
 24 wells looking for all the different materials  
 25 listed on the right-hand side of this chart; is

## 1 JOHN LEASE - REDIRECT

2 that right?

3 A. That's correct.

4 Q. Then if you go to the next page  
 5 which ends 388. Again the chart in the middle  
 6 of the page, you told them you were also going  
 7 to do groundwater sampling at sample location  
 8 B 4 using an auger monitoring method looking for  
 9 all the potential hazardous materials listed on  
 10 the right-hand side of that line; correct?

11 A. It is actually a monitoring well.

12 Q. I read auger above. Sorry.

13 A. Yes.

14 Q. You gave them notice you were going  
 15 to drill what appear to be three different wells  
 16 in three different locations to test groundwater  
 17 for a long list of potential contaminations;  
 18 correct?

19 A. Correct.

20 Q. Did they ever say to you no, don't  
 21 do this?

22 A. No.

23 Q. Then you in fact had the Phase IIs  
 24 done, paid ERM to do them; correct?

25 A. Correct.

Page 1391

Page 1393

## 1 JOHN LEASE - REDIRECT

2 Q. Let's look at the Phase II report  
 3 for the Torrance facility. This comes from bulk  
 4 Exhibit B, volume 5. So Phase I said you may  
 5 have a big groundwater problem; right?

6 A. Right.

7 Q. You better do a Phase II, scopes of  
 8 work laid out where you were going to drill, how  
 9 you were going to drill, what you were going to  
 10 look for; correct?

11 A. Correct.

12 Q. Then the Phase IIs were in fact  
 13 done; correct?

14 A. Correct.

15 Q. Would you look at page printed page  
 16 18. We are looking at Phase II report for  
 17 Torrance, which is in, from bulk Exhibit B,  
 18 volume 5. Printed page 18, your Honor, which  
 19 corresponds to the Bates number that end 579.

20 THE ARBITRATOR: Yes.

21 Q. Do you see that talks about the  
 22 various regulations in force in California and  
 23 the agencies that may need to be notified?

24 A. Yes.

25 Q. It talks about what if notification

## 1 JOHN LEASE - REDIRECT

2 Q. Would you turn to page 30, printed  
 3 page 30 which corresponds to the Bates number  
 4 ending 592?

5 A. Okay.

6 Q. Do you see under groundwater this  
 7 talks about what they found in the Phase II  
 8 studies when they sampled the groundwater. Do  
 9 you remember one of the locations you told them  
 10 you were going to drill at was B 4?

11 A. Yes.

12 Q. It says here talking about B 4,  
 13 middle of the page "the only VOC detected in the  
 14 groundwater sample from this location was PCE at  
 15 concentration of 6800 micrograms per liter." Do  
 16 you see that?

17 A. Yes.

18 Q. This amount of PCE significantly  
 19 exceeds the 5 micrograms per 1 -- what is?

20 A. Per liter. Maximum contaminant  
 21 level.

22 Q. So this is saying that the maximum  
 23 level that they would allow in the California  
 24 law was 5 micrograms per liter. And in fact  
 25 they detected here 6800 micrograms per liter, is

Page 1392

Page 1394

## 1 JOHN LEASE - REDIRECT

2 is made, then there may be various requirements  
 3 imposed?

4 A. Correct.

5 Q. Would you turn to the next page,  
 6 page 19. It says under reporting toward the top  
 7 of the page, "notification of a significant  
 8 spill or threatened release to the California  
 9 office emergency services must occur verbally  
 10 and immediately upon discovery, written reports  
 11 follow verbal notifications." Do you see that?

12 A. Yes.

13 Q. Then it goes down under Site  
 14 Assessments to say "further site assessment and  
 15 need for remedial action follows after initial  
 16 notification of a spill or threatened release?"

17 A. Yes.

18 Q. It goes on in the next paragraph  
 19 under 4.1.2 to say "Each step of investigation  
 20 is preceded by the preparation of a work plan  
 21 approved by the agency prior to the start of  
 22 work. The results may lead immediately to the  
 23 preparation of corrective action plans or  
 24 remedial action plans, etc." do you see that?

25 A. Yes.

## 1 JOHN LEASE - REDIRECT

2 that what this says?

3 A. Yes.

4 Q. This says "high reported  
 5 concentration has caused increase in detection  
 6 limits for other chlorinated VOCs potentially  
 7 masking their detection," says "this detection  
 8 of PCE suggests significant impact to the  
 9 groundwater under the site." It goes on to talk  
 10 about other findings. You provided this to  
 11 Fairchild as well; correct?

12 A. Correct.

13 Q. You gave them these reports only  
 14 after it had been mentioned in the Phase I and  
 15 in the scopes of work; correct?

16 A. Correct.

17 Q. This was you found a condition that  
 18 was already in play when they owned it; correct?

19 A. Correct.

20 Q. We heard some testimony about why  
 21 you went to the authorities or did Alcoa go to  
 22 the authorities. You heard the expert witness  
 23 who testified during the break in your testimony  
 24 talk about his experience with the California  
 25 regulators and how it works if you don't enter

1           JOHN LEASE - REDIRECT  
 2 into a decree with them. Did you hear that?  
 3       A. Yes.  
 4       Q. Let me show you Exhibit 167, Alcoa  
 5 167. Do you see these are emails from earlier,  
 6 just about a year ago February of 2006?  
 7       A. Yes.  
 8       Q. You see the email at the top of the  
 9 page is from someone named Charles Stone at the  
 10 DTSC?  
 11      A. Yes.  
 12      Q. You recognize that as the  
 13 government agency in California we were talking  
 14 about earlier?  
 15      A. Yes.  
 16      Q. Do you know Greg Pfeifer?  
 17      A. Yes, I do.  
 18      Q. Who is Greg Pfeifer?  
 19      A. Greg is an attorney in the  
 20 environmental practice area in Alcoa.  
 21      Q. The subject is Torrance; right? It  
 22 says about the fifth line down, subject  
 23 Torrance?  
 24      A. Yes.  
 25      Q. Mr. Stone of the government agency

1           JOHN LEASE - REDIRECT  
 2 DTSC writes to Mr. Pfeifer "Greg at this date  
 3 there are two options available for Alcoa either  
 4 enter into the CACA or DTSC will issue a  
 5 unilateral order demanding the site be  
 6 remediated in a timely fashion. Should you have  
 7 any questions please feel free to contact me."  
 8 Just in case that wasn't clear enough.  
 9       Is that consistent with what our  
 10 expert told us California regulators do?  
 11      A. Yes.  
 12      Q. Agree or else; right?  
 13      A. Yes.  
 14      Q. Did you have any understanding that  
 15 you were under some kind of duty to consult with  
 16 or see what the Fairchild people thought you  
 17 should do with this gun pointed at Alcoa's head?  
 18      A. No.  
 19      MR. ZUROFSKY: Objection to the  
 20 characterization of the gun.  
 21      Q. Withdrawn. Did you believe you  
 22 were under any obligation to consult with  
 23 Fairchild with respect to the position taken by  
 24 the DTSC concerning the groundwater problems at  
 25 Torrance?

1           JOHN LEASE - REDIRECT  
 2       A. No.  
 3       THE ARBITRATOR: This refers to  
 4 Torrance. Is that what it is referring to, the  
 5 groundwater problem?  
 6       MR. CHESLER: Yes, your Honor, it  
 7 is.  
 8       Q. Two other subjects and then we're  
 9 done. They asked you about the parking lot  
 10 situation in Toulouse. I shouldn't say they.  
 11 Counsel asked you. Correct?  
 12      A. Yes.  
 13      Q. Again, was this a situation where  
 14 Fairchild was saying we're not going to pay you  
 15 because you didn't give us enough notice or were  
 16 they saying we are not going to pay you because  
 17 we don't think this is a Fasteners Environmental  
 18 Condition?  
 19      A. I think they were saying it was not  
 20 a Fasteners Environmental Condition.  
 21      Q. You have been at this compliance  
 22 consulting job for quite a while; haven't you?  
 23      A. Yes.  
 24      Q. Can you tell us if there is a  
 25 serious safety problem at the Toulouse --

1           JOHN LEASE - REDIRECT  
 2       THE ARBITRATOR: Probably haven't  
 3 had this much fun in a long time though, huh?  
 4       THE WITNESS: Is that what this  
 5 is?  
 6       Q. Ever since that sleeping on nails  
 7 night at the fraternity house you haven't had a  
 8 time like this.  
 9       So, if there were an emergency at  
 10 the Toulouse facility, people were injured by  
 11 fire or by some explosion, whatever, and the one  
 12 entry points to the parking lot were for some  
 13 reason blocked, based upon your experience in  
 14 safety compliance, do you think that might have  
 15 some impact on the well-being of the people  
 16 inside the facility?  
 17      A. I wouldn't even need to be a safety  
 18 compliance expert to know there would be an  
 19 impact. Yes.  
 20      Q. By the way, the cost estimates you  
 21 were shown for doing whatever work the permit  
 22 required at Toulouse, they weren't up a lot;  
 23 didn't they?  
 24      A. Yes, they did.  
 25      Q. Is Alcoa making a dime on any of

Page 1399

1           JOHN LEASE - REDIRECT  
 2   that? Are you billing these guys for more than  
 3   it is going to cost you to do what the French  
 4   permit requires you to do?  
 5   A. No. The best we can do is break  
 6   even.  
 7   Q. The best we can do. Assuming they  
 8   are ordered to pay you and they pay you, all you  
 9   do is break even?  
 10   A. Yes.  
 11   Q. Last subject. You were asked some  
 12   questions about remediation. Let me ask you to  
 13   look, do you have the book up there we used  
 14   during direct-examination?  
 15   A. Yes, I do.  
 16   Q. Would you turn to tab 18, please.  
 17   Do you have tab 18, Mr. Lease?  
 18   A. I'm there.  
 19   Q. We have seen this letter on  
 20   direct-examination. You saw it on  
 21   cross-examination. This is the letter from Mr.  
 22   Beckford to you from February 26, 2004, Alcoa  
 23   Exhibit 32; correct?  
 24   A. That's correct. If I may point out  
 25   one error in this letter.

Page 1401

1           JOHN LEASE - REDIRECT  
 2   A. Yes.  
 3   Q. He pointed out that according to  
 4   this letter Y says that "Cost of this portion of  
 5   the report may be appropriate for  
 6   indemnification depending on what if any  
 7   remedial action is recommended/required." Do you  
 8   remember that?  
 9   A. Yes.  
 10   Q. So the dangle of a possible payment  
 11   with a capital Y. What counsel didn't show you,  
 12   what I want to go back to, is the letter that  
 13   you received almost exactly a year later from  
 14   Ms. Hall who by then had replaced Mr. Beckford  
 15   as the contact person on the Fairchild side.  
 16   Would you look at tab 19, please.  
 17   A. Okay.  
 18   Q. This is in fact the letter you  
 19   received from Ms Hall; correct?  
 20   A. Yes, it is.  
 21   Q. I want you to turn to the second  
 22   page of this letter, the backside, I believe of  
 23   the first page if you have two-sided copy.  
 24   Bates number 340 on it.  
 25   A. Yes.

Page 1400

1           JOHN LEASE - REDIRECT  
 2   Q. Yes?  
 3   A. My title is not esquire.  
 4   Q. Well it is now. We are going to  
 5   give you an honorary degree after today.  
 6   You remember this is the letter  
 7   where Mr. Beckford went through and categorized  
 8   different requests for payment you had made into  
 9   category 1, 2, and 3?  
 10   A. Yes.  
 11   Q. You were asked a lot of questions  
 12   on cross-examination about the fact that he  
 13   asked you to take the category 3 stuff and sort  
 14   it out in various ways and come back with more  
 15   information. Do you remember that?  
 16   A. Yes.  
 17   Q. Then you were shown the chart that  
 18   I think counsel told you was prepared actually  
 19   by Mr. Hodge that follows the body of the  
 20   letter. That begins at page 297. Do you recall  
 21   that?  
 22   A. Yes.  
 23   Q. Counsel pointed out to you there  
 24   were some items on this list that had a capital  
 25   Y on them, do you remember that?

Page 1402

1           JOHN LEASE - REDIRECT  
 2   THE ARBITRATOR: Tab 19?  
 3   MR. CHESLER: Yes. In the direct  
 4   exam book. On the backside of the first page of  
 5   the document. Bates number 340 at the bottom.  
 6   Do you have that, your Honor.  
 7   THE ARBITRATOR: I have it. What  
 8   is the page, 340?  
 9   MR. CHESLER: Yes.  
 10   Q. I want you to look at the next to  
 11   the last paragraph on this page from Ms. Hall.  
 12   The paragraph that begins "the agreement  
 13   requires." Do you have that?  
 14   A. Yes.  
 15   Q. The second sentence of that  
 16   paragraph she told you the following. "None,  
 17   none of the various reports, assessments or site  
 18   characterizations undertaken by Alcoa was in  
 19   response to a Fasteners Environmental Condition.  
 20   Without an Environmental Condition Alcoa's  
 21   commissioning various environmental assessments  
 22   was and is an ordinary business expense  
 23   voluntarily incurred by Alcoa." That is what she  
 24   told you?  
 25   A. Yes.

93 (Pages 1399 to 1402)

## 1 JOHN LEASE - REDIRECT

2 Q. She went on to say, bottom  
 3 paragraph "In short, Alcoa can commission all  
 4 the environmental assessments it wishes. Such  
 5 assessments, be they environmental, workplace,  
 6 health and safety or OSHA, are not Fasteners  
 7 Environmental Liabilities." Then she drops a  
 8 footnote.

9 Did you have any question in your  
 10 mind, was that ambiguous to you at all what her  
 11 position was?

12 A. Yes, it was.

13 Q. Let's look at the footnote -- you  
 14 said it was ambiguous to you?

15 A. Yes.

16 Q. How was it ambiguous?

17 A. Well, let me read it again. Well  
 18 in the first sentence she said that the, without  
 19 environmental condition Alcoa's commissioning is  
 20 an ordinary business expense. In the second  
 21 sentence she says that we can commission all of  
 22 the environmental assessments we wish to  
 23 undertake.

24 Q. She doesn't say she is going to pay  
 25 you for them; does she?

## 1 JOHN LEASE - REDIRECT

2 A. No.

3 Q. In fact she says such assessments,  
 4 whether environmental or workplace health and  
 5 safety or they are OSHA are not Fasteners  
 6 Environmental Liabilities; isn't that what she  
 7 says?

8 A. Yes.

9 Q. If they are not a Fasteners  
 10 Environmental Liability, according to Fairchild,  
 11 they are not going to pay you for them; are  
 12 they?

13 A. That's correct.

14 Q. Then she drops the footnote --  
 15 sorry, I want to go on to the text then he with  
 16 will go to the footnote. She says "The expenses  
 17 associated with implementing a remedy based on  
 18 those assessments might qualify, expenses  
 19 associated with implementing a remedy based on  
 20 those assessments might qualify. But not the  
 21 assessments themselves. Unless and until there  
 22 is a Fasteners Environmental Condition there is  
 23 no basis for indemnification." Do you see what  
 24 she says?

25 A. Yes.

## 1 JOHN LEASE - REDIRECT

2 Q. So you go to the doctor for a  
 3 physical. If he tells you you've got eight days  
 4 to live they will pay you for the physical. If  
 5 he says you're fine, they won't. That is what  
 6 it amounted to; right?

7 A. Yes.

8 Q. Is that your understanding of the  
 9 agreement you were operating under?

10 A. No. It is not.

11 Q. Do you know whether you have a  
 12 problem until you investigate to find it?

13 A. No.

14 Q. Now, let's look at the footnote.

15 "On a related matter, by letter dated February  
 16 26, 2004" by the way that is the letter we just  
 17 looked at. One where Mr. Beckford divided stuff  
 18 up and put some Ys in that counsel suggested  
 19 meant boy, if only you played along maybe you  
 20 would get paid, what does she say here she says  
 21 with respect to that letter "We requested  
 22 additional information regarding  
 23 approximately --"

24 THE ARBITRATOR: Sorry, where are  
 25 you reading from now?

## 1 JOHN LEASE - REDIRECT

2 MR. CHESLER: Footnote 1, your

3 Honor.

4 Q. She said she requested in that  
 5 letter, Fairchild requested "Additional  
 6 information regarding approximately 528,130.78."  
 7 I am not sure how you get that approximate. It  
 8 is like shooting approximately 71 in a golf  
 9 match. Of Phase II assessment costs incurred by  
 10 Alcoa. You have not provided such information.

11 Here comes the kicker. "On further  
 12 analysis we have determined that for the same  
 13 reasons expressed in this letter, the

14 \$528,130.78 in costs incurred by Alcoa are not  
 15 indemnifiable. Such costs do not relate to a  
 16 Fasteners Environmental Condition, rather they  
 17 relate to Alcoa's 'kicking the tires' they are  
 18 not Fasteners Environmental Liabilities and we  
 19 reject any attempt by Alcoa to apply these sums  
 20 against the 8 million," we have the numbers a  
 21 little wrong "8,450,000 reserve, in short all of  
 22 Alcoa's claims for indemnification under section  
 23 11.6 for environmental assessments, lock tag and  
 24 verify assessments machine guarding assessments  
 25 or any other an assessments or characterizations

Page 1407

## 1 JOHN LEASE - RECROSS

2 are rejected entirely."

3 So the Ys on Mr. Beckford's chart  
4 got yanked; didn't they?

5 A. Yes.

6 Q. You weren't getting any money, no  
7 way, no how out of Ms. Hall; right?

8 A. That's correct.

9 MR. CHESLER: Further questions,  
10 your Honor.11 MR. ZUROFSKY: I will try to be as  
12 brief as I can.13 THE ARBITRATOR: I will give you  
14 five minutes.15 MR. ZUROFSKY: This witness was  
16 someone we were calling on our direct as well.  
17 I know we are running late.18 THE ARBITRATOR: It would be nice  
19 if we finish him tonight.20 MR. ZUROFSKY: We all agree that  
21 would be a good idea.

## 22 CROSS-EXAMINATION BY MR. ZUROFSKY:

23 Q. Mr. Lease, Mr. Chesler started with  
24 the agreement. So I will, too. Do you still  
25 have a copy of the agreement?

Page 1408

## 1 JOHN LEASE - RECROSS

2 A. Yes.

3 Q. Looking at page 83, top 84 end of  
4 section 111.6 C. At the bottom of page 83 says  
5 "the buyer shall afford," do you have the same  
6 version?

7 A. Yes.

8 Q. Last sentence "The buyer shall  
9 afford the sellers a reasonable opportunity to  
10 comment on the buyer's proposed response to a  
11 Fasteners Environmental Condition buyer shall  
12 nod unreasonably refuse to incorporate the  
13 seller's comments." Do you see that, Mr. Lease?

14 A. Yes.

15 Q. I want to focus on two phrase  
16 there. Reasonable opportunities and buyers  
17 proposed response. Who is the buyer? Do you  
18 know who the buyer is in the agreement? Is the  
19 buyer Alcoa in the agreement?

20 A. Yes.

21 Q. The buyer is not ERM; is it?

22 A. They are contracted by Alcoa.

23 Q. The buyer is not -- ERM didn't buy  
24 the facilities did it?

25 A. No, they did not.

Page 1409

## 1 JOHN LEASE - RECROSS

2 Q. Mr. Chesler took you through a  
3 whole bunch of Phase Is in which ERM made  
4 recommendations. Do you recall that about  
5 machine guarding and other things?

6 A. Yes.

7 Q. We are going to look at those  
8 recommendations but we are also going to talk a  
9 bit. Those are recommendations from ERM to  
10 Alcoa; correct?

11 A. Correct.

12 Q. Did Alcoa adopt every single  
13 recommendation in the Phase Is?

14 A. I don't know.

15 Q. Did Alcoa do other things other  
16 than what was recommended in the Phase Is?17 A. Based on later information, I am  
18 sure that we did.19 Q. In fact Alcoa at the four facility  
20 we talked about performed gap analysis following  
21 Phase Is; right?

22 A. Yes.

23 Q. You told me the letters you  
24 provided to Mr. Hodge were based on those gap  
25 analysis; correct?

Page 1410

Page 1408

## 1 JOHN LEASE - RECROSS

2 A. The basis for the letters was an a  
3 combination of the gap analysis report, the  
4 actual work that was done on site as well as  
5 information that we obtained from the Phase Is.6 Q. Alcoa just didn't go out and  
7 implement all of ERM's recommendations in the  
8 Phase Is and just do them; right?

9 A. I don't know.

10 Q. You said you performed gap  
11 analysis, you did some more study; right?

12 A. Yes.

13 Q. So it is not as if once ERM made  
14 the recommendation Alcoa adopted it as its own  
15 recommendation; is that right?16 A. In essence, we reviewed all the  
17 recommendations and implemented them as  
18 necessary.

19 Q. After you had done further study?

20 A. Well we had to tailor them to  
21 specific facility, but that was the purpose of  
22 the gap analysis to define those a little more  
23 clearly for Fairchild.24 Q. When you write to Mr. Hodge in  
25 connection with those letters with the summary

95 (Pages 1407 to 1410)

Page 1411

1 JOHN LEASE - RECROSS  
 2 charts that we looked at, we can look at one of  
 3 them if you want. Turn to page 16 for Toulouse  
 4 you talked about this is the summary chart of  
 5 your gap analysis for Toulouse that is attached  
 6 to this letter.

7 A. Yes.

8 Q. You see the first line there, it  
 9 says "We have completed our initial  
 10 environmental, health and safety review of the  
 11 Toulouse facility."

12 A. Yes.

13 Q. You are talking about gap analysis  
 14 there; right?

15 A. Environmental health and safety  
 16 reviews, gap analysis is the same thing.

17 Q. You don't mention Phase I anywhere  
 18 in this cover letter to Mr. Hodge; do you?

19 A. No.

20 Q. You don't say here we are  
 21 implementing recommendations by ERM as Alcoa's  
 22 own proposals; do you?

23 A. No.

24 Q. Let's talk about what was in those  
 25 Phase Is. First one I won't hand you -- we will

Page 1412

1 JOHN LEASE - RECROSS  
 2 do Fullerton first. Mr. Chesler handed you  
 3 Fullerton. We had a lot of discussion today and  
 4 yesterday about Fullerton and machine guarding;  
 5 right, Mr. Lease?

6 A. Yes.

7 Q. Mr. Chesler said to you, was  
 8 Fullerton recommendation, the recommendation  
 9 contained in Fullerton Phase I regarding machine  
 10 guarding; do you remember that?

11 A. Yes.

12 Q. He pointed you to page 71. Do you  
 13 recall that?

14 A. Yes.

15 Q. Look at page 71 the Fullerton  
 16 facility consists of two plants and a warehouse;  
 17 right?

18 A. Yes. I think that is true.

19 Q. This is under heading Warehouse;  
 20 right page 71. Do you see that?

21 A. Yes.

22 Q. They are separate if you turn back  
 23 before there are separate headings for plant 1  
 24 and plant 2?

25 A. Okay.

Page 1413

JOHN LEASE - RECROSS

1 Q. Now the recommendation Mr. Chesler  
 2 read to you about machine guarding is under  
 3 heading warehouse; right?

4 A. Yes.

5 Q. It says "It is recommended that the  
 6 facility ensure that all machinery be equipped  
 7 with proper guarding." Do you see that?

8 A. Yes.

9 Q. Let's move forward to your letter  
 10 to Mr. Hodge about the Fullerton facility which  
 11 follows this that is at tab 14. If you turn to  
 12 the second page of the chart Bates 5000041. Do  
 13 you see that?

14 A. Yes.

15 Q. There we have entry for machine  
 16 guarding. Now it's talking about plant wide  
 17 survey of machine guarding; right? Do you see  
 18 that issue description?

19 A. Yes.

20 Q. Estimated cost is what?

21 A. \$58,000.

22 Q. How much did you spend, have you  
 23 spent so far at Fullerton on machine guarding?

24 A. 1 million.

Page 1414

JOHN LEASE - RECROSS

1 Q. Over a million; right?

2 A. Yes.

3 Q. That was the subject of that  
 4 recommendations we saw in the box yesterday from  
 5 STI. Do you recall it said the proposal  
 6 guarding solutions was in the cover letter?

7 A. Yes.

8 Q. That was facility wide; right?

9 A. I believe so. Yes.

10 Q. The box we looked at yesterday?

11 A. Pardon.

12 Q. The box we looked at yesterday?

13 A. What box?

14 Q. The box of documents for Fullerton.

15 A. Oh, okay.

16 Q. So that is Fullerton; right?

17 A. Yes.

18 Q. Mr. Chesler, you only sent these  
 19 compliance gap letters for four facilities we  
 20 talked about that?

21 A. Yes.

22 Q. Anywhere in those letters did you  
 23 say, oh, these really speak for the rest of the  
 24 facilities at all?

## 1 JOHN LEASE - RECROSS

2 A. No. This was a notice of  
3 environmental condition.

4 Q. At that facility?

5 A. At all four facilities plus it  
6 represented the conditions we found at the other  
7 plants based on information contained in the  
8 Phase Is which we went through.

9 Q. Hold on in the Phase Is and one of  
10 the ones Mr. Chesler showed you or a bunch of  
11 them I believe he pointed you to machine  
12 guarding language at among other facilities,  
13 Kelkheim, Stoughton, Montbrison, Hildesheim.  
14 Do you recall those four? They are probably  
15 right in front of you.

16 A. I recall it, the names, yes.

17 Q. Those are four other facilities  
18 than the four subject of the notice letters --  
19 of the gap analysis letters we talked about;  
20 right?

21 A. Right.

22 Q. Those four all contain  
23 recommendations as Mr. Chesler took you through  
24 about machine guarding; right?

25 A. Yes.

## 1 JOHN LEASE - RECROSS

2 Q. As did the four for the letters we  
3 looked at; right?

4 A. Right.

5 Q. So, you sent four letters to  
6 Fairchild, but you didn't send them any gap  
7 analysis letters on the four I just mentioned  
8 Kelkheim, Stoughton, Montbrison or Hildesheim?

9 A. No gap analysis letters for those  
10 plants.

11 Q. All eight of them had statements in  
12 the Phase Is about machine guarding and  
13 recommendations; right?

14 A. Yes.

15 Q. How is Fairchild to know that Alcoa  
16 was going to proceed ahead with machine guarding  
17 at Kelkheim, Stoughton, Montbrison and  
18 Hildesheim?

19 A. How did they know we were going to  
20 proceed?

21 Q. Yes, to go ahead with machine  
22 guarding work.

23 A. They were noncompliance with the  
24 regulations. It is clear in the agreement that  
25 when there is an a noncompliance condition

## 1 JOHN LEASE - RECROSS

2 noted, it is a Fasteners Environmental Liability  
3 subject to indemnification.

4 Q. You sent them this gap analysis for  
5 four facilities; right.

6 THE ARBITRATOR: Fullerton  
7 Toulouse, what were the other?

8 Q. Torrance and St. Cosme. Right?

9 A. Yes.

10 Q. We looked at a lot this morning  
11 where Mr. Miller responded. We will talk about  
12 that in one second with respect to Judge  
13 Stapleton's question.

14 Mr. Miller responded then Mr.  
15 Harvey'S letter covered those facilities, St.  
16 Cosme was a little different, but the other  
17 three?

18 A. Yes.

19 Q. That was the situation at those  
20 four facilities; right. There is no letter at  
21 the other facilities; right?

22 A. What other facilities.

23 Q. Any of the other facilities other  
24 than those four?

25 A. Yes.

## 1 JOHN LEASE - RECROSS

2 Q. Including any of the ones that  
3 mentioned machine guardings in the Phase Is?

4 A. No letters, correct.

5 Q. Turn our attention, before doing  
6 that let's talk about others. Did you do  
7 machine guarding working at City of Industry  
8 Temple Avenue?

9 A. Yes.

10 Q. Here is the Phase I.

11 THE ARBITRATOR: Gap stands for  
12 what again?

13 THE WITNESS: The difference  
14 between actual condition and regulatory  
15 condition.

16 THE ARBITRATOR: It is not an  
17 acronym?

18 THE WITNESS: No.

19 THE ARBITRATOR: You just call it  
20 a gap.

21 Q. This is Phase I for City of  
22 Industry, Temple Avenue?

23 A. Yes.

24 Q. Any mention in there about machine  
25 guarding maybe we will draw your attention to

1           JOHN LEASE - RECROSS  
 2 conclusions and recommendations?  
 3           A. I don't see it in the conclusions  
 4 and recommendations.  
 5           Q. Nothing; right?  
 6           A. Nothing on machine guarding here.  
 7           Q. How about next one Simi Valley?  
 8 Here is 437.  
 9           (Arbitration Exhibit 437  
 10 was marked.)  
 11          Q. Alcoa performed machine guarding  
 12 work at Simi Valley too, right?  
 13          A. No.  
 14          Q. Is there any mention of machine  
 15 guarding in the conclusions and recommendations  
 16 of that document?  
 17          A. For Simi Valley?  
 18          Q. Yes.  
 19          A. I don't see any.  
 20          Q. Mr. Chesler, actually Judge  
 21 Stapleton asked you whether or not you recall  
 22 that Fairchild had objected to machine guarding  
 23 on the ground of notice or definitional or both.  
 24 Do you recall that discussion?  
 25          A. Yes.

1           JOHN LEASE - RECROSS  
 2          Q. I want to draw your attention to  
 3 two documents. First is Mr. Miller's response  
 4 at Fullerton which is behind tab 15. Second  
 5 paragraph. He says "In the first stance the  
 6 letter and table lack sufficient specificity to  
 7 satisfy the notice requirements under section  
 8 11.6. In light of the foregoing Fairchild is  
 9 unable to determine and in any event disputes  
 10 whether all of these items," so on and so forth  
 11 fall within ambit of section 11.6. I don't need  
 12 to read on.  
 13          Does that refresh your recollection  
 14 that Mr. Miller was both claiming there was  
 15 notice problem and also he was disputing whether  
 16 or not this falls within the ambit of 11.6?  
 17          A. I am not sure what the notice  
 18 provisions are he is referencing. But to  
 19 describe the condition that we found in the  
 20 specific regulation that, where the  
 21 noncompliance exists it is hard for me to  
 22 understand how anybody could not see that a  
 23 Fasteners Environmental Condition existed at  
 24 that facility.  
 25          Q. Subsequent to this didn't Alcoa go

1           JOHN LEASE - RECROSS  
 2 out and spend a lot of money on producing those  
 3 documents we looked at yesterday from STI to  
 4 find out just what the problems were?  
 5          A. They did that to identify what the  
 6 solution was.  
 7          Q. Do you want to go look back at  
 8 those documents? Are you sure about that? I  
 9 don't want to bring the box out again.  
 10         A. The document contains a solution.  
 11         Q. Doesn't it contain also a  
 12 diagnostic for machine remember we looked at  
 13 high risk, low risk, medium risk it was  
 14 assessing each of the machines then proposing  
 15 potential solution; does that refresh your  
 16 recollection?  
 17         A. I don't recall what came first in  
 18 the document.  
 19         Q. Turn in your correspondence binder,  
 20 the one I handed to you under the section  
 21 miscellaneous multiple facilities, the last tab.  
 22         A. Where are we now.  
 23         Q. Go to a letter dated January 31,  
 24 2005. It is I would say about two-thirds of the  
 25 way in in that tab?

1           JOHN LEASE - RECROSS  
 2          A. On multiple facilities.  
 3          Q. Yes. Last tab multiple facilities.  
 4 Moving into about two-thirds of the way into  
 5 that tab chronological. I want January 31, 2005  
 6 if you don't mind?  
 7          A. Okay.  
 8          Q. You got it there?  
 9          A. I have it.  
 10         Q. It is a letter from Ms. Hall;  
 11 right?  
 12         A. Yes.  
 13         MR. CHESLER: Sorry, counsel, the  
 14 date?  
 15         MR. ZUROFSKY: January 31, 2005.  
 16         MR. CHESLER: Thank you.  
 17         Q. Letter from Ms. Hall?  
 18         A. Yes.  
 19         Q. I want to focus on the paragraph,  
 20 third paragraph, bottom third and equally  
 21 telling?  
 22         A. Yes.  
 23         Q. "Third and equally telling is the  
 24 fact that Alcoa seeks reimbursement for expenses  
 25 incurred primarily in 2003, later 2004." Do you

Page 1423

Page 1425

## 1 JOHN LEASE - RECROSS

2 see that?

3 THE ARBITRATOR: What paragraph  
4 are you on?5 MR. ZUROFSKY: Third paragraph,  
6 sorry, your Honor.7 Q. Let me first do the first  
8 paragraph. Let's do it in order. Look at the  
9 first paragraph which is first. Alcoa failed to  
10 demonstrate the guarding requirements of OSHA  
11 1910.212 or state or foreign equivalents are  
12 fastener environmental liability?

13 A. Yes.

14 Q. Do you understand OSHA 1910.212 to  
15 be machine regulation in OSHA?

16 A. Yes.

17 Q. Does this refresh your recollection  
18 that Hall and Fairchild were disputing  
19 requirements under that regulation constitute  
20 Fasteners Environmental Liabilities at this  
21 time?

22 A. That is what I get from this.

23 Q. That is before this arbitration  
24 proceeding and lawyers got involved; right? You  
25 don't know when the lawyers got involved? Go to

## 1 JOHN LEASE - RECROSS

2 Q. Your letter of December 20?

3 A. Okay.

4 Q. If you go back two letters in the  
5 binder I think that is your letter, December 20,  
6 2004 letter?

7 A. Okay.

8 Q. It refers to eight facilities  
9 there?

10 A. Yes.

11 Q. More than the four that we had the  
12 GAAP compliance discussion about earlier; right?

13 A. That is more than four, yes.

14 Q. Those were the four Mr. Harvey --  
15 well, three Mr. Harvey promised additional  
16 documentation to Fairchild about; right?17 A. I wouldn't say Mr. Harvey promised  
18 anything. We have been over this.

19 Q. We don't have to redo that ground.

20 A. Yes.

21 Q. Counsel spoke to you at some length  
22 about Torrance; right? Do you recall that?

23 A. Yes.

24 Q. We discussed also, you discussed  
25 also Mr. Beckford's letter with, I think counsel

Page 1424

Page 1426

## 1 JOHN LEASE - RECROSS

2 the third paragraph "Third and equally telling  
3 is the fact that Alcoa seeks reimbursement for  
4 expenses incurred primarily in later 2003 to mid  
5 2004." Do you see that?

6 A. Yes.

7 Q. "That raises two significant  
8 points. 1, Alcoa is in blatant disregard of  
9 sections 11.6 C and D of the Acquisition  
10 Agreement." See that?

11 A. Yes.

12 Q. Does that refresh your recollection  
13 Ms. Hall is also objecting on ground of failure  
14 of notice?

15 A. Okay.

16 Q. There were four letters sent as we  
17 looked at before which identified machine  
18 guarding but do you understand the subject of  
19 this letter, the one she is responding to be  
20 about more facilities than those four, do you  
21 understand what I'm saying?

22 A. No.

23 Q. She is responding to your letter;  
24 right?

25 A. Yes.

## 1 JOHN LEASE - RECROSS

2 used the phrase dangling Y. Do you recall that?

3 A. The Phase II?

4 Q. Yes. Response to the Phase IIs?

5 A. Okay.

6 Q. Now let's go to that letter. I  
7 believe at tab 18 of that binder.

8 A. I have it.

9 Q. Did you, do you recall that counsel  
10 took you through whole chronology about  
11 Torrance; right?

12 A. Yes.

13 Q. Said Phase I identified problems  
14 then there is Phase II that identifies problems  
15 after scope of work had been provided do you  
16 recall that?

17 A. Yes.

18 Q. Subsequent to the Phase IIs at  
19 Torrance Alcoa did perform further  
20 investigations at that facility; correct?

21 A. Yes, I believe we did.

22 Q. Prior to the involvement of the  
23 DTSC and Consent Agreement those investigations  
24 happened in that interval; right?

25 A. I have to check the chronology. I

99 (Pages 1423 to 1426)

## 1 JOHN LEASE - RECROSS

2 don't know. I am losing track of time here.

3 Q. I can show you documents for now  
4 can we work on that assumption.

5 A. For the discussion, okay.

6 Q. Mr. Beckford's letter is in  
7 response to the Phase II's; right?

8 A. Yes.

9 Q. I want to turn again to the page FC  
10 299 okay. Do you recall Mr. Chesler talking  
11 about the former underground storage tanks at  
12 Torrance.

13 A. Yes.

14 Q. If you look at that first box, 9 A  
15 here on page 299. It is talking about former  
16 underground storage tanks. Do you see that  
17 there?

18 A. Yes.

19 Q. The last line of that comment  
20 section says "The source of this impact is not  
21 entirely clear from Alcoa's assessment." That  
22 being the Phase II assessment; right?

23 A. I assume.

24 Q. "However it present an issue which  
25 should be followed up" do you see that?

## 1 JOHN LEASE - RECROSS

2 A. Yes.

3 Q. Go back to the cover letter from  
4 Mr. Beckford, again early 2004 FC 296.

5 A. Okay.

6 Q. The last bit of text before the  
7 stars says "On those sites as to which we agree  
8 that there should be further investigation" we  
9 just looked at Torrance, right, as sites on  
10 which Fairchild indicated there should be  
11 further investigation; right?

12 A. Yes.

13 Q. "Please ensure that the actual  
14 investigative measures are first discussed with  
15 our designated representative Michael Hodge as  
16 required by section 11.6 of the Acquisition  
17 Agreement." Do you see that?

18 A. Yes.

19 Q. Now, prior to Ms. Hall's letter  
20 with the footnote that counsel ended on, did you  
21 discuss or communicate in any way prior to  
22 taking investigative work at Torrance with  
23 Fairchild?24 A. We sent them information. I am not  
25 sure we communicated directly with Mr. Hodge.

## 1 JOHN LEASE - RECROSS

2 But we considered the recommendations or  
3 suggestions in the table. Which was our  
4 requirement that we should reasonably consider  
5 the comments.6 Q. Comments on what? What is he  
7 commenting on, commenting on Phase I results of  
8 the reports; right?9 A. He also was commenting, in essence,  
10 on the proposed action.11 Q. Does it say that? Where does it say  
12 that?13 A. Present and issue which should be  
14 followed up.15 Q. At that point had Alcoa put  
16 together a proposal or scope of work as to how  
17 it should be followed up?

18 A. Did he what?

19 Q. Did Alcoa put together a proposal  
20 or scope of work as to how it should be followed  
21 up?22 A. I don't know. I don't recollect  
23 the documents. There they are.

24 Q. Actually they are not there.

25 That's the point. Scope of work is not there.

## 1 JOHN LEASE - RECROSS

2 Let's move forward. Ms. Hall, counsel spent a  
3 lot of time with you on Ms. Hall's letter of  
4 February 25, 2005; right in which she says in  
5 the footnote she says voluntary assessments and  
6 all that stuff. Do you recall that?

7 A. Are we on her letter now?

8 Q. Yes.

9 A. Okay.

10 Q. Right?

11 A. Right.

12 Q. That was in response the a letter  
13 you wrote on January 25, correct that is what it  
14 says there?

15 A. Okay.

16 Q. Let's look at that letter.

17 THE ARBITRATOR: What tab?

18 MR. ZUROFSKY: Tab of which one?

19 THE ARBITRATOR: You are going to  
20 go to the Hall letter?21 MR. ZUROFSKY: The Hall letter is  
22 the response. The one Mr. Chesler spoke about  
23 at the footnote is at tab 19 of Mr. Chesler's  
24 binder. Now that was the letter Ms. Hall wrote  
25 in response to a letter from Mr. Lease which I

Page 1431

Page 1433

1           JOHN LEASE - RECROSS  
 2 would like to look at now.  
 3       Q. In my binder if you go to the  
 4 Torrance tab.  
 5       A. Okay.  
 6       Q. A couple letters in there should be  
 7 one from January 25, 2005?  
 8       A. Okay.  
 9       Q. Do you see it?  
 10      A. Yes.  
 11      Q. This is the letter Ms. Hall is  
 12 responding to; right?  
 13      A. Yes.  
 14      Q. In this letter up at the top you  
 15 say "Enclosed for your information are reports  
 16 summarizing the results of recent soil and  
 17 groundwater investigative activities undertaken  
 18 by Alcoa at the former Fairchild Fasteners in  
 19 Torrance and Fullerton subsequent to acquisition  
 20 of the facilities by Alcoa." Do you see that?  
 21      A. Yes.  
 22      Q. That is work that had been done at  
 23 those facilities already, yes?  
 24      A. Yes.  
 25      Q. It is not work related, it is not

Page 1432

Page 1434

1           JOHN LEASE - RECROSS  
 2 the Phase IIs; right?  
 3       A. No it is not.  
 4       Q. If you turn two pages, there is a  
 5 chart you attached. From that chart does it  
 6 seem clear, sir, it wasn't just at Torrance and  
 7 Fullerton that Alcoa performed work subsequent  
 8 to the Phase IIs in terms of investigating the  
 9 California sites?  
 10      A. There are four plants listed here.  
 11      Q. There is a cost of a million  
 12 dollars at the bottom there?  
 13      A. Yes.  
 14      Q. Which is for work that had been  
 15 done at that point January 25, 2005?  
 16      A. Yes.  
 17      Q. That work was in addition to the  
 18 Phase IIs done at those facilities?  
 19      A. This would have been yes.  
 20      Q. Between the time of Mr. Beckford's  
 21 letter where he says please discuss any of the  
 22 investigations prior to the actual investigative  
 23 measures with Mr. Hodge and this time when you  
 24 send Ms. Hall -- Mr. Beckford, excuse me, the  
 25 bill for a million dollars of subsequent

1           JOHN LEASE - RECROSS  
 2 investigations at the California facilities did  
 3 you in any way discuss or approach Fairchild  
 4 about the investigations that are represented on  
 5 this chart?  
 6       A. I am not sure what reports preceded  
 7 this January 25 letter.  
 8       Q. Are you aware of any?  
 9       A. Not offhand without looking at the  
 10 binders.  
 11      Q. They would be in the correspondence  
 12 between you and Fairchild; correct?  
 13      A. They would have been, yes.  
 14      Q. If they are not there they didn't  
 15 exist, you don't have any other recollection of  
 16 communications; do you?  
 17      A. No.  
 18      Q. Another thing Mr. Chesler showed  
 19 you was Phase II report for Torrance. Do you  
 20 recall that it was Alcoa Exhibit volume B, bulk  
 21 B, volume 5 of 15. Do you see it?  
 22      THE ARBITRATOR: Where are you  
 23 looking?  
 24      MR. ZUROFSKY: Phase II for  
 25 Torrance which Mr. Chesler handed out. Alcoa

1           JOHN LEASE - RECROSS  
 2 arbitration Exhibit B volume 5 of 15.  
 3       THE ARBITRATOR: Go ahead. I  
 4 don't need it, just proceed.  
 5       Q. Page 19. Do you recall Mr. Chesler  
 6 taking you through this page?  
 7       A. I haven't found it up here yet.  
 8       Okay. I will look at it on the screen here.  
 9       Q. I want to focus in on section  
 10 4.1.2.  
 11      A. Okay.  
 12      Q. Second paragraph. This is the  
 13 Phase II for Torrance; right?  
 14      A. Yes.  
 15      Q. This is the document you say  
 16 provided Fairchild with notice of Alcoa's  
 17 proposed response with respect to investigations  
 18 at Torrance; right?  
 19      A. I am not sure if this is a general  
 20 description of the process or what this  
 21 represents.  
 22      Q. I am asking about this document.  
 23 It was your testimony earlier today, if I recall  
 24 correctly the Phase IIs provided the information  
 25 and notice about proposed further investigations

101 (Pages 1431 to 1434)

1 JOHN LEASE - RECROSS  
 2 at the facilities; right?  
 3 A. Well, the Phase IIs clearly define  
 4 where the next activities were to occur.  
 5 Q. In your view?  
 6 A. Yes. In my view.  
 7 Q. Responding to that Fairchild said  
 8 with respect to Torrance, yeah, there might be  
 9 need for further investigation; do you recall  
 10 that?  
 11 A. For Torrance?  
 12 Q. Yes.  
 13 A. Yes.  
 14 Q. Mr. Beckford said please discuss  
 15 with Mr. Hodge beforehand; right?  
 16 A. Yes.  
 17 Q. Read if you can this paragraph. I  
 18 will read it "Each step of an investigation is  
 19 preceded by the preparation of a work plan  
 20 approved by the administrative agency prior to  
 21 the start of work. The results of site  
 22 assessments may lead immediately to preparation  
 23 of corrective action plans or remedial action  
 24 plans, but may cycle through several site  
 25 assessments first to adequately define the

1 JOHN LEASE - RECROSS  
 2 extent of environmental impact at a site."  
 3 Do you have any reason to doubt,  
 4 sir, that is a process applicable to further  
 5 site assessments past Phase II in these areas?  
 6 A. I am not sure about the  
 7 administrative agency aspect of it. I think  
 8 that refers to a spill or threatened release.  
 9 But in general the process that followed is do a  
 10 scope of work defines the next steps that is  
 11 based on the previous report findings.  
 12 Q. Do you recall as well we looked at  
 13 Exhibit 134 earlier today where there was email  
 14 exchange between Mr. Hendrix and Mr. McShae.  
 15 Your counsel objected, he said you weren't on  
 16 the email chain. It discussed the Phase IIs and  
 17 going forward in the Southern California sites?  
 18 A. Vaguely, yes.  
 19 Q. Do you recall the subject matter of  
 20 that email was comments Mr. Hendrix might have  
 21 on ERM's Phase IIs before they were sent to  
 22 Fairchild?  
 23 A. Yes.  
 24 Q. Do you recall that Mr. Hendrix  
 25 further said that in the big picture sense the

1 JOHN LEASE - RECROSS  
 2 ERM suggestions were narrower than what Mission  
 3 had planned at the Southern California sites?  
 4 A. They were narrower?  
 5 Q. Right.  
 6 A. I'd have to look at the email again  
 7 to get the wording.  
 8 Q. The email will speak for itself.  
 9 Do you recall we had that discussion earlier  
 10 today?  
 11 A. Yes.  
 12 Q. Still on Torrance, Mr. Chesler  
 13 showed you an email from DTSC. He referred to  
 14 as the gun to the head email. Do you recall  
 15 that?  
 16 A. Yes.  
 17 Q. Prior to that time do you know that  
 18 Consent Agreements, the terms of which are  
 19 subject to negotiation, Mr. Lease?  
 20 A. Say again.  
 21 Q. Are Consent Agreements negotiated  
 22 documents, are the terms negotiated?  
 23 A. Generally, yes.  
 24 Q. I think we saw earlier today Alcoa  
 25 received a draft of Consent Agreement at least

1 JOHN LEASE - RECROSS  
 2 as early as September 2005. Do you recall that?  
 3 A. Yes.  
 4 Q. There was no drafts provided to  
 5 Fairchild of that agreement prior to the  
 6 execution of that agreement; right?  
 7 A. No, it isn't necessary to do that  
 8 under the agreement.  
 9 Q. Let's look at the agreement then,  
 10 go back to section 11.6 C.  
 11 THE ARBITRATOR: The answer to his  
 12 question is there weren't any; were there? Why  
 13 do we have to go back to the agreement?  
 14 MR. ZUROFSKY: That's fine.  
 15 THE ARBITRATOR: I assume there  
 16 were not, right, drafts of the Consent Agreement  
 17 furnished to Fairchild before it was signed?  
 18 THE WITNESS: That's right.  
 19 Q. Second to last topic Mr. Chesler  
 20 asked you about was the Toulouse parking lot.  
 21 A. Yes.  
 22 Q. Do you recall he asked you if it  
 23 would be in your view as a safety professional a  
 24 problem if there was not enough access for cars.  
 25 Do you recall that?

Page 1439

1           JOHN LEASE - REDIRECT  
 2           MR. CHESLER: Object, your Honor,  
 3 I didn't say it was a safety professional.  
 4           Q. Safety experience. We can look it  
 5 up. Do you recall that?  
 6           A. I think the comment was would it be  
 7 a safety issue if access was blocked to the  
 8 facility because there were too many cars in the  
 9 parking lot.  
 10          Q. You said I don't need to be a  
 11 safety expert or professional, I forget the word  
 12 to know that, it is obvious; right?  
 13          A. It is obvious, yes.

14          Q. Would it be a safety issue for  
 15 employees at the plants if they didn't have  
 16 trees to shade their cars while they were  
 17 working?

18          A. If somebody was prone to heat  
 19 stroke, possibly.

20          MR. ZUROFSKY: Nothing further.

21          MR. CHESLER: Your Honor, I  
 22 promise two minutes.

23          RE-DIRECT EXAMINATION MR. CHESLER:

24          Q. Would you quickly go back to  
 25 Ms. Hall's letter tab 19 in the book, please,

Page 1440

1           JOHN LEASE - REDIRECT  
 2 Mr. Zurofsky asked you about the fact this was a  
 3 letter you got in response to a letter to  
 4 Ms. Hall that dealt, among other things, with  
 5 the Torrance facility, just asked you about that  
 6 a FEW minutes ago. Do you recall that?

7          A. Yes.

8          Q. Would you look at page 341 third  
 9 page of the letter or front of the second  
 10 physical page. 341. Do you have that?

11         A. Yes.

12         Q. Look at the bottom of the page, the  
 13 paragraph about Torrance.

14         A. Okay.

15         Q. She says "According to Alcoa's  
 16 Phase I and Phase II assessments there are signs  
 17 of some environmental contamination, however"  
 18 she goes on to say "Groundwater contaminants as  
 19 Mission Geoscience reports likely came from  
 20 offsite sources" do you see that?

21         A. Yes.

22         Q. Then she tells you, "in any event,"  
 23 in other words, regardless of anything I just  
 24 said, all of the assessments for this site, like  
 25 all of the assessments and characterizations are

Page 1441

1           JOHN LEASE - REDIRECT  
 2 not Fasteners Environmental Liabilities unless  
 3 and until remedial action occurs, there is no  
 4 basis for a claim under section 11.6. She told  
 5 you unless the doctor tells you you're dying  
 6 you're not getting paid for the physical; right?

7          A. Right.

8          Q. He asked you about the Fullerton  
 9 facility, he pointed out the particular  
 10 paragraph I showed you in the Phase I related to  
 11 the warehouse as opposed to the factory. Do you  
 12 remember that?

13         A. Yes.

14         Q. Based on all your experience with  
 15 these people over four years, do you believe if  
 16 you said pay for the machine guarding across the  
 17 street in the factory rather than the warehouse  
 18 they would have paid you for it?

19         A. No, sir.

20         Q. Last question, after you got this  
 21 little missive from Ms. Hall, did you honestly  
 22 think that they would have paid you for machine  
 23 guarding in any of the other sites other than  
 24 the four five or six or seven you already told  
 25 them about?

Page 1442

1           JOHN LEASE - RECROSS

2          A. No, sir.

3          MR. CHESLER: No further  
 4 questions.

5          MR. ZUROFSKY: One question, your  
 6 Honor.

7          RE-CROSS-EXAMINATION BY MR. ZUROFSKY:

8          Q. That same document, turn the page  
 9 after the paragraph Mr. Chesler just read you  
 10 when he said "in any event," so on and so forth.  
 11 Do you recall that a minute ago, yes?

12         A. Pardon.

13         Q. Do you recall Mr. Chesler just read  
 14 you a paragraph from Ms. Hall's letter?

15         A. Yes.

16         Q. Turn the page. Top of the next  
 17 page, very next paragraph. And lastly, as you  
 18 should know, section 11.6 C requires Alcoa to  
 19 consult with and provide information to  
 20 Fairchild with respect to Fasteners  
 21 Environmental Liabilities. Section 11.6 D  
 22 requires proper notice of matters which may give  
 23 rides to indemnification obligation, no  
 24 information was imparted no consultation was  
 25 sought and no prompt notice was given with

103 (Pages 1439 to 1442)

1 JOHN LEASE - RECROSS  
 2 respect to any of the expenses incurred and  
 3 actions under taken by Alcoa of the matters  
 4 under review. Do you see that?

5 A. Yes.

6 Q. She is responding to the chart were  
 7 you gave a million dollars of investigation  
 8 costs following Mr. Beckford's letter; right?

9 A. Let me point out subsequent to this  
 10 every work plan, every report, every scope of  
 11 work we sent to Fairchild received no  
 12 substantive comment.

13 Q. I didn't get an answer to my  
 14 question.

15 A. It gets back to Mr. Chesler's  
 16 point. The attitude at this point on behalf of  
 17 Fairchild was clearly they were going to block  
 18 every avenue that we had to receive  
 19 indemnification for the issues we inherited from  
 20 Fairchild.

21 Q. The parties went to remediation  
 22 shortly after this?

23 A. What is the date on this letter?

24 Q. February 25, 2005.

25 A. Thereabouts.

1 JOHN LEASE - RECROSS  
 2 MR. ZUROFSKY: I have nothing.  
 3 THE ARBITRATOR: You are excused.  
 4 (Witness excused)

5 (Time Noted 6:24 p.m.)

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1 C E R T I F I C A T E

2  
 3 STATE OF NEW YORK )  
 4 : ss.  
 5 COUNTY OF NEW YORK )

6  
 7 I, TAMMEY M. PASTOR, a Registered  
 8 Professional Reporter, Certified LiveNote  
 9 Reporter and Notary Public within and for the  
 10 State of New York, do hereby certify that the  
 11 foregoing proceedings were taken before me on  
 12 January 11, 2007;

13 That the within transcript is a true  
 14 record of said proceedings;

15 That I am not connected by blood or  
 16 marriage with any of the parties herein nor  
 17 interested directly or indirectly in the matter  
 18 in controversy, nor am I in the employ of the  
 19 counsel.

20 IN WITNESS WHEREOF, I have hereunto  
 21 set my hand this \_\_\_\_\_ day of \_\_\_\_\_,  
 22 2007.

23  
 24  
 25 TAMMEY M. PASTOR, RPR, CLR

1 INDEX

2 WITNESS:	PAGE:
3	
4 (Arbitration Exhibit 429 was marked.)	103
5 (Arbitration Exhibit 430 was marked.)	109
6 (Arbitration Exhibit 431 was marked.)	118
7 (Arbitration Exhibit 432 was marked.)	127
8 (Arbitration Exhibit 433 was marked.)	133
9 (Arbitration Exhibit 434 was marked.)	133
10 (Arbitration Exhibit 435 was marked.)	133
11 (Arbitration Exhibit 437 was marked.)	141

12 \*\*\*\*\*

13  
 14 (Exhibit 436 intentionally skipped.)

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